

Exhibit 1

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK
4 17-cv-3586 (JS) (JMW)

-----x

4 U.S. Small Business
5 Administration as Receiver of
6 ELK ASSOCIATES FUNDING CORP.,
7 Plaintiff,
8 -against-

9 MICHAEL FEINSOD, SILVIA MULLENS,
10 RICHARD FEINSTEIN, GARY GRANOFF,
11 STEVEN ETRA, JOHN LAIRD, IVAN J.
12 WOLPERT, HOWARD SOMMER, MURRAY
13 INDICK, ELLIOTT SINGER, and PETER
14 BOOCKVAR,

Defendants.

-----x

14 October 28, 2021
15 9:20 a.m.

16
17 VIDEOTAPED REMOTE DEPOSITION of MICHAEL ROSS
18 FEINSOD, held at the above-mentioned date and time,
19 before Judith Castore, a Certified Livenote Reporter
20 and Notary Public of the State of New York.
21
22
23
24
25

A P P E A R A N C E S
(ALL PARTIES APPEARED VIA ZOOM VIDEOCONFERENCE)

ON BEHALF OF PLAINTIFF

GOTTESMAN, WOLGEL, FLYNN,
WEINBERG & LEE, P.C.
11 Hanover Square, 4th Floor
New York, New York 10005
BY: STEVEN WEINBERG, ESQ.
sweinberg@gottesmanlaw.com
KELSEY BILODEAU, ESQ.
kbilodeau@gottesmanlaw.com

ON BEHALF OF DEFENDANTS: John Laird, Ivan
Wolpert, Howard Sommer, Elliott Singer, Peter
Boockvar and Murray Indick

HOLLAND & KNIGHT, LLP
31 West 52nd Street
New York, New York 10019
BY: MARTIN SEIDEL, ESQ.
Martin.Seidel@hklaw.com
MARIE LARSEN, ESQ.
marie.larsen@hklaw.com

ON BEHALF OF DEFENDANTS: Michael Feinsod and
Richard Feinstein

MOLO LAMKEN, LLP
430 Park Avenue
New York, New York 10022
BY: RAYINER HASHEM, ESQ.
rhashem@mololamken.com
ELIZABETH CLARKE, ESQ.
eclarke@mololamken.com

ALSO PRESENT:

BOB BRASCH, IT Concierge
Veritext Legal Solutions
PHIL GLAUBERSON, Legal Video Specialist
Veritext Legal Solutions

IT IS HEREBY STIPULATED AND AGREED, by and
among counsel for the respective parties hereto,
that the filing, sealing and certification of the
within deposition shall be and the same are hereby
waived.

IT IS FURTHER STIPULATED AND AGREED that all
objections, except to the form of the question,
shall be reserved to the time of trial;

IT IS FURTHER STIPULATED AND AGREED that the
within deposition may be signed before any Notary
Public with the same force and effect as if signed
and sworn to before the court.

* * * *

FEINSOD

VIDEOGRAPHER: Good morning.

We are going on the record at
9:20 a.m. Eastern Time,
October 28, 2021.

Please note that microphones
are sensitive and may pick up
whispering and private
conversations. Please mute your
microphone whenever possible.
Audio and video recording will
continue to take place unless all
parties agree to go off the
record.

This is Media Unit 1 of the
video-recorded deposition of
Michael Feinsod in the matter of
U.S. Small Business Administration
as receiver of Elk Associates
Funding Corp. versus Michael
Feinsod, et al., filed in the
United States District Court
Eastern District of New York,
17-cv-3586.

This deposition is being held

FEINSOD

remotely. My name is Phil
Glauberson from the firm Veritext
and I am the videographer. The
court reporter is Judy Castore
from Veritext.

I am not authorized to
administer an oath. I'm not
related to any party in this
action, nor am I financially
interested in the outcome.

Counsel will please now state
their appearances and affiliations
for the record. If there are any
objections to proceeding or to the
court reporter administering the
oath virtually, please state them
at the time of your appearance,
beginning with the noticing
attorney.

MR. WEINBERG: Steven
Weinberg; Gottesman, Wolgel, Flynn
& Weinberg, P.C. We are the
attorneys for the Plaintiff,
United States Small Business

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Administration as receiver for Elk Associates Funding Corp.

MS. BILODEAU: Kelsey Bilodeau, also Gottesman, Wolgel, Flynn & Weinberg, P.C., also for the receiver.

MR. HASHEM: Ray Hashem; Molo Lamken, LLP, attorney for Michael Feinsod and Richard Feinstein.

MS. CLARKE: Elizabeth Clarke, also of Molo Lamken, LLP, also for Defendants Feinsod, and Feinstein.

MR. SEIDEL: Good morning. Martin Seidel, Holland & Knight, LLP, for the independent director Defendants.

MS. LARSON: Marie Larson, also Holland & Knight, on behalf of six independent director Defendants.

VIDEOGRAPHER: Okay. Will the court reporter please swear in the witness.

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M-I-C-H-A-E-L R-O-S-S F-E-I-N-S-O-D,
Having been duly sworn by a Notary Public within and for the State of New York, stated an address as 60 The Intervale, Roslyn, New York 11576, was examined and testified as follows:

MR. WEINBERG: Thank you.

Just briefly, we would like to let everyone know that we're going leave the deposition open to reserve time for any additional questions, but also for the questions relating to any additional documents that may be produced by the defendants, for example --

THE WITNESS: Can I -- sorry to interrupt. Would there be any way for you to -- the window behind you is producing a lot of glare that -- when you move from side to side. Is there any way -- do you mind closing that window or the binds.

MR. WEINBERG: Sure.

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THE WITNESS: Thank you.

MR. WEINBERG: If I may finish my statement.

THE WITNESS: Sure. I'm sorry. I apologize.

MR. WEINBERG: Thank you.

And subject to the production of any additional documents that were found before Mr. Feinstein's deposition, to question Mr. Feinsod about any additional documents that are produced. Okay.

Excuse me one second.

THE WITNESS: Thank you.

It's still there. I apologize.

MR. WEINBERG: Okay. But now you hit on rule one. Rule one.

EXAMINATION BY MR. WEINBERG:

Q Good morning, Mr. Feinsod. You know that I represent the receiver in this action and I'm going to be asking questions about the claims in this action.

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FEINSOD

Have you -- and rule one is -- and I appreciate what you are asking for, no problem. But just when we give a question, let me finish the question. Or if I give a statement, let me finish the statement, and then you will give your answer.

As you know or may know, it will make it easier for the court reporter to take the transcript. Okay?

A Absolutely.

Would you mind fixing the -- I apologize, but the window -- you still keep -- when you move over, there's this glare in the right corner.
Q It will probably pass in less than 15 minutes, but is -- if it's bothering you --

A I appreciate it. Thank you.

That's perfect. Thank you very much.

Q Okay. Mr. Feinsod, have you been deposed before?

A Yes.

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Q Okay. How many times?

A Once.

Q What -- what type of case was it?

A It was a -- it was a divorce case.

Q Have you testified before?

A Not outside of that deposition.

Q Just a couple of rules for today. It's very important when I ask a question for you to give a verbal answer, as you have been doing.

If you -- is there anything that you -- any medication or any condition that affects your ability to give truthful testimony under oath to answer questions today?

A No.

Q We'll probably take a break about one every hour, hour and a half. If you need a break at any time, please let us know.

Judy, the court reporter,

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please let us know as well if you need a break.

Typically, we have been taking a lunch break at about 12:30 for half hour. So hopefully that will work with your schedule; is that okay?

A It should. I got my day -- my day is full -- my day is blocked out for this.

Q Thank you.

If, at any time, you don't understand the question, please say so and I will be happy to rephrase it. Okay?

A Yes.

Q Did you review documents or categories of documents to prepare for the deposition today?

A Yes.

Q What did you review?

A A substantial amount of documents that were provided within the -- I'm sorry -- within the discovery delivered by your client.

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Q Okay. What were the general categories of documents that you looked at?

A There were no general categories; there were 25 years' of e-mails, roughly, 20 -- about 20 years of e-mails, many duplicative. There were over a million -- million documents within the discovery, so.

Q Okay.

A I tried to limit them and review some of them.

Q Okay. Did you review any pleadings or court papers?

A Yes.

Q Okay. Which ones, if you remember?

A Various ones. Complaints filed against the SBA, complaints filed against me, answers, amended complaints, amended answers in general.

Q In the -- did you review any company records?

A Yes.

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Q What were the company records you looked at?

A What company?

Just to establish, what company are we talking about?

Q Talking about AmeriTrans. We're talking -- the company operated with the parent-subsidiary relationship. The company, I believe, is commonly referred to AmeriTrans and Elk together.

What was -- was that your understanding of the company?

A The company -- again, I don't -- there are two companies, I guess, in the way you just spoke. So there's AmeriTrans and it's wholly-owned subsidiary, Elk.

Q Did you review -- what were the records that you reviewed for AmeriTrans and/or Elk?

A SEC filings; SBA filings; e-mails; underlying documents; stock purchase agreements; ancillary

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agreements to stock purchase agreements; other documents that I might not have specified there.

E-mails between SBA officials; investment committee reports at the SBA; materials submitted by Elk to the SBA; examination reports prepared by the SBA.

I could -- that's about as specific as I can get.

Q Did you take any notes to prepare for your testimony for today?

A No.

Q Did you -- I'm not asking about what conversations you had with your attorneys. If your attorneys were part of the conversation, please do not answer the question.

Did you have any conversations with Mr. Feinstein in preparing for today's deposition?

A No.

Q Did you have any conversations with any of the former

FEINSOD

board members in preparing for today's deposition?

A No.

Q Could you briefly tell us your educational background.

A Starting when?

Q College.

A College. I attended the George Washington University in Washington, DC.

Q What was your degree in, when did you graduate?

A Graduated in 1993 with a Bachelor of Arts in Political Science. And a minor in Economics.

Q Did you -- and did you continue after college with your education?

A Yes.

Q And where did you go?

A I attended Fordham Law School, graduating in 1996.

Q And what was your employment history either during law school or

FEINSOD

after law school?

A During law school, I worked for several different money management firms, as well as the summer -- I had summer associate position at Paul Hastings.

Q And what did you do -- generally, what was your work at the money management firms?

A Analytical. Financial statement analytics, understanding the markets, learning to -- assisting trading in the bond markets and in the equity markets.

Q And at Paul Hastings, generally, what were your assignments?

A I was an associate in the mergers and acquisitions department. I concentrated in telecommunications mergers and acquisitions, specifically cellular and cable systems.

Q After your graduation from law school -- well, other than your JD degree, do you have any other

FEINSOD

educational certifications?

A Educational, no.

Q Okay. Are there other certifications that you have?

A At one point was a licensed stockbroker in order to be affiliated with a broker-dealer. I don't know what the license is called.

Q And did you maintain that license, or you do not maintain that license?

A No, I don't maintain that license, since probably 1998.

Q And is there -- why do you not -- why did you decide not to continue to maintain that license?

A I was no longer affiliated with the registered broker-dealer, and have not been since.

Q And who was the registered broker-dealer that you were affiliated with?

A Mark Boyer and Company.

Q And what was your work with

FEINSOD

them?

A I was a research analyst and a leverage buyout analyst.

Q And what -- in terms of -- now after -- after you graduated from law school, what was your employment history?

A I mentioned I joined Paul Hastings as an associate in the corporate law department.

Q How long was that?

A Until late 1997, I believe.

Q Okay. Generally, what were your assignments there?

A My assignments were working with telecommunications companies primarily, and cellar and cable transactions in mergers and acquisitions.

Acquisitions, my primary job was due diligence and facilitating transfers of -- helping the clients complete the transactions through the transfer of any licenses.

FEINSOD

Specifically, FCC cellar licenses, local municipal licenses that might be associated with it, and in some cases --

(Clarification by the reporter.)

A -- pole attachment agreements.

Q Thank you.

After '97, what did you next do for work?

A I joined Mark Boyer and Company full-time as a research analyst.

Q And how long were you a research analyst for Mark Boyer?

A Until December of 1998.

Q Okay. Was your -- and your research analysis assignments, were they the same as to what you testified before, or were they different during '97 and '98?

A I'm sorry. I didn't -- I didn't understand the question.

FEINSOD

Q Sure.

As a research analyst, were the assignments or topics the same as what you had previously testified to today?

A We -- I had two -- we had two primary lines of business. One was identifying publicly traded companies that were trading below their intrinsic value; and then the second line of business was evaluating private transactions that people -- that investors might be considering doing known as management buyouts, private market as opposed to public market equities.

Q Okay. All right.

In terms -- all right. After working for Mark Boyer, did you have employment?

A I formed my own company called Infinity Capital Management -- Infinity Capital, excuse me.

Q Sure.

FEINSOD

What was your position with Infinity Capital?

A I was the managing member.

Q And what did you do for Infinity Capital?

A Infinity Capital's major business was managing Infinity Capital Partners, which was an investment partnership that focused on small capitalization stocks, publicly traded stocks.

Q And what was the size of Infinity Capital Partners?

A I'm sorry. What does that mean?

Q I'm sorry. For -- well, Infinity Capital, were you the sole member or were there other members?

A There are various Infinity entities, so -- that had different investors in them. Infinity Capital LLC, I was the sole member.

Q How many investors?

A In Infinity Capital, none.

FEINSOD

Q I'm sorry.

A None. In Infinity Capital, none.

Q Were the investors in Infinity Capital Partners?

A Yes.

Q How many investors were in Infinity Capital Partners?

A I don't recall.

Q What was the -- approximately, what was the size of the investment pool?

A At what point?

It ranged. It exists today -- it existed -- I'm sorry. It doesn't exist anymore.

It was -- it existed for 20 years. It had different sizes at different times.

Q What was the -- approximately, what was the range?

A Zero to 40 million.

Q And what were the type of investments that Infinity Capital

FEINSOD

invested in -- Infinity Capital Partners?

A Publicly traded equities.

Q Did there -- after 1999, did you serve on any boards?

A Yes.

Q What boards did you serve on?

A Corporate or charitable or what?

Q Corporate.

A I sat on the board of --

(Clarification by the reporter.)

A -- Asta Funding. A-S-T-A, Funding, F-U-N-D-I-N-G.

Q What is Asta Funding?

A Asta Funding was a publicly traded finance -- specialty finance company.

Q And what type of investments?

A Purchased credit card receivables, charged off credit card receivables were their major line of business.

FEINSOD

Q And what was your position on the board?

A Just a member of the board.

Q Did you serve on any board committees?

A No.

Q Any other corporate boards that you have served on?

A Yes.

Q I'm sorry. One more question for Asta Funding. When -- what was your approximate dates of service as a member of the board of Asta?

A Late 2001 through 2003, maybe 2004.

Q What were the other boards that you have served on?

A Publicly traded companies or charities?

Q I'm sorry. Corporate boards, please.

A Private -- just public or private, just to be clear as to when we're talking about companies?

FEINSOD

Q I'm sorry. How many companies. We'll cover both. How many companies did you serve on the board?

A I'm just clarifying. You would like private companies as well?

Q Yes.

A Okay. I served on the board of a company called FreeSamples.com from 1997 until 2000.

Q Okay. In what capacity?

A As a board member. No committees.

(Unreportable cross-talk.)

(Clarification by the reporter.)

A No committees.

(Clarification by the reporter.)

MR. WEINBERG: I said "Any committee assignments?"

Q In addition to FreeSamples.com, what other corporate boarded have you served on?

A In 2007 -- I'm sorry. In

FEINSOD

2005, I joined the board of AmeriTrans Capital and Elk Associates Funding Corporation simultaneously.

Q And in what capacity did you join AmeriTrans and Elk?

A As a board member.

(Whereupon, a discussion was held off the record.)

Q As a board member for AmeriTrans and Elk, did you have any committee assignments starting in 2005?

A No, I don't believe.

Q And what were your -- generally, what responsibilities did you have as a board member for AmeriTrans and Elk starting in 2005?

A I need a more specific question. I apologize.

Q Sure.

A What my responsibilities were.

Q What were your responsibilities as a board member for AmeriTrans and Elk?

FEINSOD

A Generally, to observe management and make sure -- because we -- served in various capacities to observe management, how they were running the company, and the management of the company -- the management of the company.

Q And that -- and you served in that capacity from 2005 until what time?

A With respect to Elk, till the receivership, which would be April of 2013, I believe, when I was -- and then with respect to AmeriTrans, as a director until July of 2013, I believe.

Q And at what time did you become an officer of AmeriTrans and Elk?

A I don't recall specifically.

Q Were you an officer when you joined the board in 2005?

A No, I was not.

Q Would it be -- do you remember approximately when you became

FEINSOD

president -- withdrawn.

Did you become president of Elk and AmeriTrans?

A Yes.

Q Do you remember approximately as to when that was?

A I would -- I believe it was approximately late 2007, December of 2007.

Q When you became president of AmeriTrans and Elk, were you -- did you have any other titles at that time in late 2007?

A Any titles? With respect to what? Sorry.

Q For example, CEO, CFO --

A I was --

Q -- CCO. Did you have any --

A At AmeriTrans?

Q Or Elk, between the time period of 2005 and 2007.

A No, I don't believe so.

Q Before you became president at AmeriTrans, do you recall any

FEINSOD

particular board issues that -- where you were exercising oversight as to how management was running the company?

A No, I don't recall.

Q We'll come back to AmeriTrans and Elk.

Did you serve as a member of any other corporate boards in addition to FreeSamples.com, Asta Funding, and AmeriTrans and Elk?

A Yes. I served on the board of directors of Kingstone Companies.

Q When was that?

A K-I-N-G-S-T-O-N-E.

I'm sorry. The company was originally called DCAP, new word, Group, when I joined the board, approximately 2007.

Q I'm sorry. How long were you a board member?

A DCAP subsequently changed its name to Kingstone Companies, and I was a board member of Kingstone Companies until early 2015.

FEINSOD

Q Okay. And what were you -- did you serve on any committees as a board member of Kingstone or DCAP?

A I served on the compensation committee of Kingstone.

Q And what were your responsibilities as a board member for DCAP and Kingstone?

A General board member responsibilities of corporate oversight and making -- and interviewing management's actions in running the company.

Q Do you recall any particular issues that developed there that required the board to have an action involvement with oversight or how management was running the company?

A I don't understand. Could you repeat the question.

Q Okay. With respect to Kingstone, do you recall any board issues or discussions regarding board oversight or how management was

FEINSOD

operating the company?

A I don't recall specifically.

Q Have you served on any other corporate boards?

A No -- I'm sorry. I apologize.

Q Please.

A Yes, yes, I did. I served as the -- on the board of General Cannabis Corporation, excuse me.

Q And in what capacity did you serve on the board of General Cannabis?

A Executive chairman of the board.

Q And approximately what years did you hold that position?

A 2014 through 2020.

Q And what were your general responsibilities as executive chairman of the board for General Cannabis?

A They were -- I managed the day-to-day functions of the company in conjunction with the CEO.

Q And what occurred or what

FEINSOD

decisions were made that you left General Cannabis in 2020?

MR. HASHEM: Objection.

Assumes facts not in evidence.

Lack of foundation.

Q Do you understand the question?

A No, I didn't. Could you repeat it.

Q Sure.

You left General Cannabis in 2020; is that right?

A As a board member and -- yes.

And as an employee. Excuse me.

Q Okay. And what was -- why did you leave General Cannabis as a board member and as an employee in 2020?

A A general disagreement with management.

Q What was the disagreement?

A On bookkeeping, and policies and procedures.

FEINSOD

Q What policies and procedures did you disagree with?

A The CFO's recordkeeping with respect to option plans and certain accounting nuances.

Q What were the accounting nuances?

A Just the CFO's qualifications in general, and understanding of public company accounting.

Q Okay. Do you have any certifications in accounting?

A No.

Q Is your knowledge of accounting based upon your experience -- your work experience that you've outlined here today so far?

A Yes. And I've taken several accounting classes.

Q What accounting classes have you taken?

A I don't recall. They were over 25 years ago.

Q And where did you take the

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accounting classes? Was that undergraduate?

A At George Washington University and at Fordham Law School.

Q Briefly, what were the -- what charitable boards have you served on or are you serving on?

A I currently sit on the board of the Sid Jacobson Jewish Community Center in Rosalyn, New York. I've sat on that for 19 years, I believe.

I sit on the board of George Washington University's liberal arts school. I sat on that over 10 years.

I sat on few other charity boards historically that I no longer am affiliated with.

Q Okay. Any of them -- any one of them come to mind, or you don't recall?

A Jacob's Cure is a 501(c)(3).

Q Any others come to mind?

A No, I don't believe so.

Q What's your current

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employment?

A I'm not employed currently.

Q With AmeriTrans -- well, with AmeriTrans and Elk, did there come a time where you became the CEO of AmeriTrans and Elk?

A Yes.

Q When was that?

A I don't recall.

Q Would that have been sometime in 2008?

A Could you repeat the question, just to be clear.

Q Approximately when did you -- approximately what year or by what year were you the CEO of AmeriTrans and Elk?

A Probably 2009 is when I became -- when I was appointed president, I believe.

Q Okay. Did you hold the titles at the same time, president and CEO?

A At one point, yes.

Q Okay. Was there -- I'm

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sorry. I'm just trying to understand your answer.

Was there a period of time where you were only the president and not yet the CEO of AmeriTrans and Elk?

A Yes. I believe I joined the company as president, and then the added title of CEO in 2009, in early 2009 or late 2008.

Q Okay. And how did you come to join; in other words, how were you introduced to AmeriTrans and Elk to join the board?

A Beginning in 2001 through Infinity Capital Partners, I began acquiring common shares in AmeriTrans Capital.

And that lead to a multi-year process of getting to know the company better; getting to know Gary Granoff, the chairman and CEO, the president of the company. And increasing -- and over -- beginning by 2005, I believe we owned over 5 percent of the company.

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Q When you say "we," who is "we"?

A Infinity Capital Partners.

Q Okay. And what were -- was it at that point in 2005, then, you were asked to join the board and become president of AmeriTrans -- withdrawn.

A No.

Q Please correct me.

A I didn't hear you. I'm sorry. What's the question?

Q In 2005, who asked -- did you ask to join the board or did someone ask you to join the board for AmeriTrans and Elk?

A Gary Granoff asked me to join the board.

Q Okay. And it was some point later, I guess -- was it some point later -- was it 2008 that you thought you became the president?

A Yeah, I believe -- I don't know the exact dates. I apologize.

Q Okay. If you recall, what

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was your discussions with Mr. Granoff as to what role he was looking for you to fulfill at AmeriTrans and Elk, and why he wanted you to join the board?

A To work alongside him to expand the company's portfolio into -- beyond medallion funding and into corporate loans.

Q And in your initial discussions with Mr. Granoff, what were you -- in what areas were you looking to expand the company's portfolio?

A Shift the focus of the company's portfolio from medallion -- from taxicab medallion loans to what are known as senior secured corporate loans.

Q And the senior secured corporate loans, in your discussions with Mr. Granoff, what was the -- was that for AmeriTrans to invest, Elk to invest, both companies to invest? Which company was taking the investment -- I'm sorry. Which company

FEINSOD

was taking the investment vehicle?

A Elk was always going be to the investment vehicle.

Q When you joined the board for AmeriTrans and Elk, were there companies -- I'm sorry -- where there committees to help the board with its assignments or work?

(Clarification by the reporter.)

A I don't recall.

Q What committees did Elk and AmeriTrans have?

A In 2005 when I joined the board, I don't recall.

Q I understand.

After 2005, did Elk and AmeriTrans have any committees for the board of directors to help with its work and oversight?

A Yes.

Q What were those committees?

A The -- it was a compensation committee and an audit committee as

FEINSOD

required by -- I guess as required by NASDAQ regulations, in compliance with NASDAQ regulations.

Q Was there an investment committee?

A Under the 1940 act, the entire board was considered the investment committee.

Q Other than what's considered or designated under a statute, was there an investment committee that was -- that operated under a charter for AmeriTrans or Elk?

A I don't recall.

Q Was there an investment committee at any time for AmeriTrans or Elk that met separately -- that met separately to discuss company business?

A Yes, there were ad hoc committees that met from time to time to discuss certain aspects outside of the two committees that you might be referring to.

Q Such as? You can recall

FEINSOD

anyone of the ad hoc committees?

A Conklin. There was an ad hoc committee to handle the co-lendings -- the some of the loans that Elk had entered into as a co-lender with other SBICs.

Q Do you remember who -- now, when we say ad hoc committee to handle the co lending that Elk entered into with respect to the Conklin investment, was that an ad hoc committee within Elk?

MS. CLARKE: Objection to the form.

Q You can answer.

A To -- clarify again. I apologize.

Q Do you know who served on the ad hoc committee for Elk for the Conklin investment?

A Myself, Gary Granoff, and that was -- I believe that was it with respect to that.

Q Do you remember what the

FEINSOD

particular issues were regarding the Conklin investment that the ad hoc committee --

A Yes.

Q What was --

A Yes. The lead lender was in receivership because another SBIC was in receivership, and very little could be done to -- the loan went into default.

The loan was originated before I joined the company and was in default from the day I joined the company as a board member. And the loan had been restructured by the lead lender several times and was a troubled asset -- it was a non-performing asset, excuse me.

Q Do you remember who the lead lender was?

A Yes.

Q Who was the lead lender?

A I believe it was Fundex Capital.

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Q When you met with Gary Granoff regarding the Elks investment in Conklin, was there any formal agenda for the meeting?

A No.

MR. HASHEM: Objection. What meeting are you --

MR. WEINBERG: For an ad hoc committee meeting.

Q Were minutes taken of ad hoc committee meetings?

A E-mails may have been.

They weren't meetings. To call them meetings would misconstrue them.

Q Okay. So then would the e-mails be minutes if they're not --

A The e-mails would be minutes memorializing what Gary and I had done as directors to evaluate the investment. Does that help? Is that clear? Excuse me.

Q Okay. And do you recall approximately what period of time -- or

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during what period of time generally you would have met with Gary Granoff to discuss the Conklin investment?

MS. CLARKE: Objection to the form. And mischaracterizes the testimony.

Q Go ahead. You could answer. The testimony speaks for itself.

Do you remember when or over what --

A We discussed it -- we discussed it regularly from when I joined the company till Gary left the company.

Q And when did Gary leave the company? Do you remember?

A I don't recall.

Q Were there other ad hoc committees that discussed -- withdrawn.

Were there other ad hoc committees to discuss other topics at Elk?

A No, I don't believe so.

Q Were there other ad hoc

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committees to discuss topics at AmeriTrans?

A No, there were not.

Q Were there -- were there any formal meetings of an investment committee that was separate and apart from a board meeting?

A Yeah. There were investment -- there was an ad hoc committee to follow the corporate loan program when we first launched it. And that committee, I believe, was at one point myself, Gary Granoff, and Murray --

(Clarification by the reporter.)

A Murray Indick, I-N-D-I-C-K.

Q And what were some of the corporate loans that the committee was following?

A I don't recall specifically.

Q Okay. Do you recall any one of them?

A Not from memory, no.

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Q And when you met, was this informally or formally that there were discussions between yourself, Gary Granoff, and Murray Indick?

A You said when we met was there --

Was that the question?

Q In order for the -- how did the ad hoc committee meet or discuss following the corporate loan program?

A We would review written summaries of the proposed loans, and maybe ancillary documents as well; and then consider both, I guess, the viability of the investment.

Q And would this be reviewed informally through e-mails, or would there be a sit-down meeting that you would review these items?

A It was e-mails, e-mails and memos.

Q Other than the e-mails and memos, was there any agenda or meeting minutes that were taken with respect to

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the ad hoc committee to follow the corporate loan program?

A I don't recall.

Q And approximately what was the time frame that this ad hoc committee followed the corporate loan program? From when until when?

A I don't recall specifically.

Q There came a time when Mr. Indick resigned from the board. Do you recall that?

A That he resigned I recall, yes.

Q Okay. Did the ad hoc committee that was following the corporate loan program continue their review until Mr. Indick resigned from the board?

A I don't recall.

Q Did there come a time where you, Gary Granoff, and Murray Indick had stopped following the corporate loan program and reviewing it?

A I can only speak to me, but

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never. Never for myself.

Q Never for yourself?

A Never for myself. Could you repeat -- the question didn't -- I can't speak about Gary and Murray.

Q Okay. Well, I'm talking -- you always continued to review the corporate loan programs yourself, correct?

A Correct.

Q Okay. I'm talking about -- I'm asking about an ad hoc committee reviewing the corporate loan program.

Your discussions with Gary and Murray, did there come a point in time where those discussions stopped?

A Probably when Murray left the board.

To be clear, the full board reviewed the entire corporate loan portfolio quarterly.

Q Okay. And that --

A As the investment committee for Elk.

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Q That was at a board meeting, correct?

A I don't recall where, but it was approved.

Q How did --

A Each loan -- the board reviewed each loan in the portfolio on a quarterly basis.

Q Are you referring to the board's review of the 10-Qs or the 468s?

MR. HASHEM: Objection to form.

A Among other items, yes.

Q Okay. What other items would the board review quarterly?

A There was a detailed loan review report prepared quarterly.

Q And how was that report presented to the board?

A By e-mail.

Q And where -- was that report discussed with the board at a board meeting?

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A Which report?

Q The detailed loan report.

A From which quarter -- from what date?

Q I don't know. We're just talking about your general practice.

You said the investment committee was the entire board that reviewed --

A Yes.

Q -- quarterly the --

(Unreportable cross-talk.)

(Clarification by the reporter.)

A I apologize. The question again?

Q What's the general practice or procedure that you followed that the board members reviewed each corporate loan on a quarterly basis?

MS. CLARKE: Objection --

A Management -- I'm sorry.

MS. CLARKE: Objection to the form.

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Q You could answer.

A Management prepared a document, a summary document going through the loans. The performance, the character, the size, the collateral, and the value of each asset at the end of each quarter and presented it to the board.

Q When management presented it to the board, was that -- how was it presented to the board; by e-mail orally?

A It was a PDF -- it was always a paper document that was PDFed and delivered, either electronically or on paper, to the directors -- to the members of the board, excuse me.

Q And as your general practice, was this an agenda item that was to be reviewed or discussed if there were any questions at a board meeting?

A Yes.

Q And obviously --

A Could I -- to qualify that,

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at quarterly board meetings. There were board meetings that didn't cover those items -- I apologize -- to clarify.

Q Understood.

So what -- in addition, were there other documents that the board reviewed to review the investments that the company made in addition to the quarterly valuations that management prepared?

A I don't recall.

Q What are 10-Qs and 10-Ks?

A SEC filing, required SEC filing.

Q Do they -- do the 10-Qs or 10-K have schedule of investments?

A Do whose 10-Ks and 10-Qs have?

Q AmeriTrans's 10-Qs and 10-Ks, do they generally have a schedule of investments?

A Yes.

Q Is a draft 10-Q or 10-K

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presented to the board to review on a quarterly basis?

A Could you restate the question. The board doesn't exist anymore, so.

Q Does the -- we're talking about what the general practice was of AmeriTrans and Elk when you --

A Sorry to interrupt.

Q When you were the president of AmeriTrans and Elk, during that period of time, was it the general practice of the board to review a 10-K and a 10-Q on a quarterly basis?

MR. SEIDEL: Objection to form.

A Prior to filing, the board distributed a draft copy of the documents you refer to, to review.

Q And do the -- does the draft 10-K or 10-Q generally have a schedule of investments?

A Specifically it does.

Q Are there other documents

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that are distributed to the board to review that have a schedule of investments or portfolio financials for AmeriTrans or Elk?

A I apologize. You were speaking in the present tense. It doesn't exist anymore, so "are" as opposed to "were." Can we clarify that.

Q So that we don't have to clarify for every question, I'm talking about the general practice and procedure for your -- while you were president of Elk and AmeriTrans.

A Okay.

Q So we're talking about the time period from approximately 2008 through 2013.

A Okay.

Q During the time period of 2008 through 2013, were there other documents that the board reviewed on a periodic basis that contained a schedule of investments?

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A I believe so.

Q What were those other documents?

A We had internal loan reports, referred to as OLS reports, which were distributed as well.

Q On what date and what periodic time were they distributed -- were the OLS reports distributed?

A Quarterly.

Q Are the OLS reports the same or different than the reports you previously testified to that management prepared as a summary of all the investments?

A Yes.

Q In what way was the OLS reports different than the quarterly valuation reports?

A OLS is a payment report showing payments, disbursements, and receipts with respect to the loan.

Q Now, the OLS reports and the valuation reports -- withdrawn.

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Were there any other reports or financial documents that were prepared for the board to review that show a schedule of the investments during the period of 2008 through 2013?

A With respect to the preparation of the 10-Qs and -Ks?

Q Anything. The preparation of any document.

A It's a broad question. I don't recall specifically.

Q Okay. Was there anything else with respect to the 10-Qs and -Ks?

A I don't believe so.

Q Okay. Were there any schedules of investments prepared in --

First of all, what is a 468?

A Say quarterly filing, and SBIC is required to file the SBA.

Q We lost your -- okay.

A Did you get my back?

Q We got you back. We lost you there.

A I'm sorry. Computer timed

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out, I apologize, from not touching it.

Q Okay. Does the 468 -- how often is the 468 filed with the SBA?

A I believe there's different requirements for different types of SBICs, and the timing and the requirements of filing of the 468.

Q Do you remember what the timing or requirements for the filing of the 468 for Elk as a corporate SBIC?

A I don't believe -- it's not a corporate test, its other members, it's other tests. But I believe we filed it quarterly.

Q The 468, is that a summary of financial statements or information regarding Elk?

A I wouldn't want to characterize it. It's a government -- it's a mandated report that the SBA requires.

Q What type of information is contained on the 468 that's filed with the SBA by Elk?

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A Financial information in the format that's guided by the SBA's charter accounts.

Every -- I guess. Sorry. Every SBIC, when you're formed, is required to adopt the SBA's chart of accounts. And then that Form 468, I believe the reporting on that Form 468 follows that chart of accounts.

Q Is there a schedule of investments or financings that are a part of the 468 that Elk files with the SBA?

A Within the Form 468 the investments are detailed. I don't know. It's a thick document broken into different sections, so I don't know if a considered a schedule or not.

Q Is the --

A As they're listed.

Q Sure.

Is the 468 reviewed by the board?

A Yes -- I'm sorry. Sorry,

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yes.

Q Okay. And is that also generally reviewed by the board for Elk on a quarterly basis?

MR. SEIDEL: Objection to form.

A Yes.

Q Other -- okay.

What I'm asking is a very specific question. Other than at a board meeting reviewing loan reports as to valuations, has the AmeriTrans or Elk board members met at a separate time to discuss investments or loans that were made by AmeriTrans or Elk?

MR. SEIDEL: Objection to form.

A Should I answer?

Q Sure.

A It was discussed at -- I'm sure loans were discussed at meetings other than quarterly approved meetings where the 468 was approved.

Q Okay. When we say

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"meetings," what meetings are you referring to? Are you referring to other board meetings where loans may have been discussed?

A I believe so. Yes, I believe so.

Q Other than board of directors meetings discussing loans, were there other -- were there other meetings of board members as an investment committee?

MR. SEIDEL: Objection to form.

A Other than described, I don't believe so.

Q In terms of what was discussed at board meetings, were minutes generally kept of board meetings?

A When?

Q At any time from 2008 through 2013, were there --

A Generally, yes.

Q Did there come a time when as

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president and CEO of AmeriTrans and Elk you would act as secretary for the board meeting?

A Yes.

Q What was your general practice as secretary -- I'm sorry. Withdrawn.

Would the secretary generally take the minutes for the meeting?

A Yes, I believe so.

Q What was your general practice when you acted as secretary for taking the minutes of the meeting?

A To keep an accurate summary of what was discussed at the board meeting, and memorialize any resolutions that might need to be memorialized or any decisions that might need to be memorialized specifically at board meetings.

Q What was the practice, your general practice that you followed, as to how you would -- withdrawn.

In order to memorialize, did

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you make a draft copy of the minutes?

A No -- I'm sorry. When?

Before the meeting or after the meeting? I apologize.

Q At any time. Would you make a draft copy of the minutes before the board meeting as a part of your general practice?

A Never.

Q Did you make a draft copy of the minutes after the board meeting?

A Yes.

Q And then --

A When I was secretary.

Q I'm sorry?

A When I was secretary, yes.

Q And what was your practice with respect to how you -- you would get comments regarding the draft minutes?

A The draft minutes would be presented at a subsequent board meeting to the full board for review.

Q After the draft minutes are

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presented at a subsequent board meeting and the full board reviewed it, what happens next with respect to the draft minutes?

A Specifically, I don't recall. But in general, they would be ratified, would be the normal process.

Q When the minutes -- okay.

Would there be a point in time where if the minutes are ratified -- withdrawn.

Are the draft copies of the minutes signed by you as secretary before they're reviewed and approved by the board at a subsequent meeting?

A I don't recall, but I wouldn't believe that they would be signed as a draft.

Q I'm asking you what your general practice is as to whether you signed draft copies of the minutes before they were reviewed or --

A I don't --

Q -- before they were reviewed

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or approved by the board?

A I don't recall as to signing, the procedure.

Q Was there a way that the minutes -- when it says "draft," are they marked as a draft? Is there something to indicate that it's a draft on the document itself?

A Historically -- sometimes they would be -- it would have a watermark, might be the practice.

Q And did you have a practice after the board reviewed and approved the minutes to take -- to reprint the minutes without a watermark or draft?

A I don't recall, but I believe that they were put in a binder, what were considered the final minutes. I don't recall the specific steps with respect to signing them.

Q Okay. Would the -- okay.

What was your general practice in terms of when you would sign the -- would you sign minutes

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after the board reviewed and approved and made any changes or comments to the minutes?

A I don't recall a specific procedure.

Q What was -- what was your general practice during that period of time?

A With respect to what?

Q When you would sign the minutes, whether you would sign it before the board had reviewed it or after the board added any comments to the draft?

A I don't recall, but I would believe it would be after they were in draft -- after they were approved.

Q And ratified by the board?

A And ratified by the board.

And if they were submitted to the board with a signature on them, they would be open to comment at any board meeting.

Q If the board had any comments

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or corrections, was it your practice to put those comments or corrections in the board minutes?

A Yes.

MR. WEINBERG: This is probably a good place to take a five-minute break. If I may just ask you -- I should have included this in the beginning.

Q At any -- I assume during your testimony you've been -- you're alone in the room; is that correct?

A Your assumption is correct.

Q Okay. Thank you.

Just a general instruction that we give to all the witnesses. If at any times someone does enter the room, just please let us know. Okay?

A Sure.

Q Thank you.

MR. WEINBERG: May we take a five-minute break?

MR. HASHEM: Yep.

VIDEOGRAPHER: This will end

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Media Unit 1. Going off the record at 10:28, October 28, 2021. (Whereupon, a brief recess was taken.)

VIDEOGRAPHER: We are back on the record. The time is 10:43, October 28, 2021. This will begin Media Unit 2.

Q Welcome back, Mr. Feinsod. Thank you. Is your mic okay? Just test your mic.

A Yes.

Q Okay. Thank you.

When you joined the board to become a director for Elk and AmeriTrans, did you receive -- well, Elk is an SBIC; is that correct?

MR. HASHEM: What was the question?

Q Do you know that Elk is an SBIC?

A It's not.

MR. HASHEM: Objection.

Assumes.

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Q Did you know that Elk was an SBIC?

A Yes.

Q Okay. What is an SBIC? What is your understanding of an SBIC?

A It's a small business investment company.

(Whereupon, a discussion was held off the record.)

A Sorry. I apologize.

Q I'm sorry. Mr. Feinsod, is there a technical problem, or is that something that just happens --

A There's something -- no, it's -- it seems to be timing out every couple of minutes, like sleep function. I'll try and avoid that. I will move it. Thanks.

Q Okay. And is there a government agency that regulates small business investment companies?

A Yes.

Q And which agency is that?

A The Small Business

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Administration.

Q When you began as a board member of Elk, did you receive any type of training with respect to a small business investment company?

A No.

Q Did you ever attend any training with respect to the Small Business Administration Act and regulations regarding small business investment companies?

A I believe I did.

Q When was that?

A I don't recall the date.

Q Was it a coverage, training, what -- what was the class certification or how was it arranged?

A I attended -- I attended a NASBIC seminar by Carol Fin- --

(Clarification by the reporter.)

A I can spell it out, NASBIC, N-A-S-B-I-C.

They were the, I guess -- I

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don't know technically what they are, but they organized and arranged what are known as SBA regulatory classes. And I attended one taught by primarily Carole Finler and Howard Cooper.

Q You said "they." Who is "they"?

Are you referring back to NASBIC organizing the class?

A I apologize. I don't -- could you repeat my -- what I said?

Q Sure. Let me restate the question.

Do you know who organized the seminar? Was it organized by the SBA or NASBIC?

A I don't know who organized it.

Q Do you know what NASBIC stands for?

A National Association of Small Business Investment Companies.

Q It seemed to be that -- did you attend the one class or more than

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one class?

A I attended one regulatory class.

Q And did they hand out materials?

A I believe so.

Q Did you -- did you maintain or keep those materials?

A I believe I kept them until I left -- when I left Elk. I considered them the property of Elk.

Q What were the materials that were provided at the regulatory class?

A It was a large binder.

Q Do you remember what year you took the class, approximately?

A No.

Q Did you -- did you read what -- the information that was in the binder?

A I don't recall.

Q Do you remember what the topics were that were covered in the regulatory class?

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A Not specifically.

Q Do you remember any of the topics that were covered in the regulatory class?

A Not specifically.

Q Do you remember any of the topics that were covered in the binder?

A Not specifically.

Q Did you -- did you review the binder after you took the class?

A No.

Q During -- after you took the class, did you need -- did you review any portion or check any part of the binder regarding any issue that may have come up in your work for Elk as board member, president, or CEO?

A I don't recall.

Q Do you recall reviewing any of the regulations regarding the operation of small business investment companies?

A Yes.

Q Which regulations did you

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review?

A Various sections of the CFR that would associate -- that would deal with the regulation of SBICs.

Q There is a reference to self-dealing -- well, withdrawn.

Do you know -- there is a reference to what's called a conflict of interest. Do you have an understanding as to what a conflict of interest is?

MR. HASHEM: Objection.

There's -- objection.

Q Okay. Do you know if there's a regulation dealing with conflicts of interest?

A I believe there is.

Q Do you have an understanding as to what the -- what a conflict of interest is regarding an SBIC?

MR. HASHEM: Objection.

Calls for legal conclusion.

MR. WEINBERG: I'm asking for his own understanding.

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A Not by memory.

Q Do you know if there is any requirement with respect to -- well, withdrawn.

Could we introduce -- withdrawn.

Other than looking at the regulations, do you know if there -- do you know what TechNotes are?

A Yes.

Q Okay. What are -- what is your -- from your experience, what's your understanding of TechNotes?

A Periodic updates distributed by the SBA to SBICs with regard to operating items.

Q Did you receive any -- do you know if you've reviewed any SBIC TechNotes from the SBA?

A I believe I did.

Q Which ones?

A I don't recall which ones.

MR. WEINBERG: If we can mark Tab 37, please, as Exhibit 1.

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(Technote 8 - April 2002, was marked Exhibit 1, for identification, as of this date.)

A Should I be doing anything within Egnyte?

Q Once that's marked, we will let you know and you could refresh your exhibit folder.

While we're waiting for that to be marked, is AmeriTrans a small business that is eligible -- withdrawn.

Is AmeriTrans a small business that may get a financing from a small business investment company?

MR. HASHEM: Objection.

Calls for a legal conclusion.

Q I'm talking about your --

Mr. Feinsod, in your understanding, would AmeriTrans be a small business that could receive financing from a small business investment company?

A No. It's bankrupt. I don't think the SBA would -- I don't think you could lend to a bankrupt company.

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I don't believe so.

Q We're talking about the period of time 2008 to 2013, before AmeriTrans filed for bankruptcy.

Would AmeriTrans qualify as a small business and receive financing from a small business investment company, from your understanding?

MR. HASHEM: Objection.

Calls for a legal conclusion.

Q Again, I'm -- Mr. Feinsod, you can answer, your understanding.

A I don't know.

Q Did Elk make a financing to AmeriTrans?

MR. HASHEM: Objection.

Calls for a legal conclusion.

Q You can answer the question.

A No, I don't believe we did.

Q There are certain requirements -- do you understand that SBIC has certain requirements as to what types of financings an SBIC can make to a small business; is that

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correct?

MR. HASHEM: Objection.

Calls for a legal conclusion.

What does "financing" mean?

Q You can answer.

A Yeah, what does "financing" mean? Just so I can --

Q Yeah, well, what is -- what is a financing that an SBIC can make? Do you have an understanding of what a financing is?

A I don't -- not specifically anymore. I don't remember the details of it.

Q What were Elk's assets?

A Elk's assets were loans; and to a lesser extent, equity investments in companies -- or to companies -- loans to companies or equity investments in companies.

Q Do you know if those loans or equity investments are called "financings" or "portfolio financings"?

A I don't recall.

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Q We can look at Exhibit 1, please. Mr. Feinsod, were you able to open it?

A It's not coming yet.

Q Okay.

A I'm refreshing. It might.

Sorry. I'm going to log back into Egnite.

MR. WEINBERG: May we go off the record so we don't take up time.

VIDEOGRAPHER: Going off the record. The time is 10:57.

(Whereupon, a brief recess was taken.)

VIDEOGRAPHER: We are back on the record. The time is 11:07.

Q Mr. Feinsod, I believe you are looking at Exhibit 1. Can you just tell me generally what exhibit 1?

A It's entitled: SBIC TechNotes, April 2002nd, number 8.

(Clarification by the reporter.)

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A 2002 number 8.

Q Guidelines for SBA Approval of Conflict of Interest Transactions.

Have you reviewed or read the SBIC TechNote number 8 before?

A I don't recall.

Q Okay.

A I have it in front of me now.

Q Okay. If you look at the word "associate," does -- did you have an understanding as to what the term "associate" meant with respect to operating an SBIC?

A I apologize. I'm reading the definition, if you would give me a minute.

Q Again, please review it, but I'm just asking if it refreshes your recollection if you knew or have an understanding as to what an associate was in connection with operating an SBIC.

A I had an understanding that it was a defined term under the

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regulations.

Q Okay. Did you have an understanding as to whether common officers, directors, or owners are associates with respect to Elk and AmeriTrans?

MR. HASHEM: Objection.

Calls for a legal conclusion.

A Not specifically.

Q Did you have an understanding if Elk and AmeriTrans were associates of each other as a parent and a subsidiary?

MR. HASHEM: Objection.

Q You can answer. I'm just asking --

A I'm reading. You gave me the exhibit, so I'm reviewing it and trying to form an understanding.

So I don't -- I apologize.

Q Okay.

A Is there a question?

Q Okay. It was just whether or not -- I'm sorry. Did you answer the

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question whether -- did you have an understanding as to whether Elk and AmeriTrans were associates of each other?

MR. HASHEM: Asked and answered.

Q What was your answer?

A No, not specifically.

Q Okay. No, that you did not have an understanding; is that -- is that your answer?

A You gave me -- I'm reading -- you give me an exhibit to review. I apologize. Do you want me to review the exhibit, or do you want me to answer the question?

Q You can review the exhibit if it refreshes your recollection.

I'm asking as to whether or not you had an understanding -- when you were operating Elk as an SBIC as president and CEO, did you have an understanding if Elk and AmeriTrans were associates of each other?

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A Okay. If you give me a minute to review the document to refresh my memory, I appreciate it.

No, I don't have a recollection.

Q Okay.

A This doesn't help.

Q Okay. Thank you.

If you go to page 2: Control Person.

A Okay.

Q Above it, do you see the word: Definition of control and control person?

A Yeah.

Q Did you have an under- -- when you were operating Elk as an SBIC as the president and CEO, did you have an understanding of what the term "control" meant?

MR. HASHEM: Objection.

A I don't recall.

Q Okay. Did you have -- in terms of management and CEO -- I'm

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sorry.

In terms of your position as president and CEO of Elk, were you a -- do you have an understanding if that meant you were a control person for Elk as an SBIC?

A I don't recall, no.

Q Okay. As president and CEO of AmeriTrans, did you have an understanding that you were a control person for AmeriTrans?

MR. HASHEM: Objection.

A I don't recall.

Q If you skip -- on page 2, if you look at where it says: Subsection A general rule: You must not self-deal to the prejudice of a small business licensee, its shareholders or partners or SBA.

Did you -- had you reviewed that provision before with respect to 13 CFR 107.730?

MR. HASHEM: Objection.

Asked and answered.

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Q You could answer.

A This only -- this only contains part -- I don't know what 107.730, I don't -- you know, at the time, I don't know what -- I guess the time period, it probably changes. Regs are amended from time to time.

So the question specifically is -- I don't know if I'm looking at a summary of 107 --

Q Okay.

A -- 730.

Q Sure. I'll restate the question.

Do you recall reviewing a regulation about self-dealing as president and CEO of Elk?

A Not specifically.

Q Okay. As president and CEO of Elk, do you have an understanding as to what self-dealing is?

MR. HASHEM: Objection.

Calls for a legal conclusion.

A I don't recall specifically

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how the regulation is worded.

Q Okay. I'm not asking how the regular is worded. Do you have an understanding of self-dealing in terms of the operation of Elk and AmeriTrans as president and CEO?

MR. HASHEM: Objection.

Calls for a legal conclusion.

A I don't recall. It's been more than six years since I've been active in the management of an SBIC. If not longer, eight years.

Q You could put the exhibit away. Thank you.

A Thanks.

Q In terms -- in terms of operating Elk as an SBIC, do you recall if there are regulations affecting regulating transactions regarding whether Elk may be able to make a profit?

MR. HASHEM: Objection.

Form. Objection. Calls for a legal conclusion.

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A I am going to ask you to say the question one more time because I didn't hear it.

Q Sure.

A It's very detailed. Sorry.

Q No worries.

In terms of what are -- well, withdrawn.

Do you have an understanding as to what a prohibited transaction is in terms of operating Elk as a small business investment company?

MR. HASHEM: Objection.

A No, I don't recall what prohibited transactions means.

Q Do you -- when making a transaction -- withdrawn.

When making a transaction for Elk, do you know or do you have an understanding that one of the factors is whether or not Elk is able to make a profit on the transaction as a small business investment company?

MR. HASHEM: Objection.

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A I don't know what you mean by "transaction."

Q Any type of financial transfer.

MS. CLARKE: Object to the form.

Q You can answer.

A I really don't understand the question. Explain what the transaction -- what are you asking -- please repeat the question. Thank you.

Q Elk as an SBIC may make a financing; is that correct?

MR. HASHEM: Objection.

Calls for a legal conclusion.

A I don't know technically what a financing is.

Q What are Elk's assets? Their loans and investments, correct?

A I believe I asked and answered that already.

Q Is that right?

A Correct.

Q Okay. And as to -- do you

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have an understanding that Elk's loans and investments are supposed to make a profit for Elk as an SBIC; is that correct?

A The question doesn't make sense.

Q Okay. If you can't answer the question, then you can't answer the question.

A What was the question referring to?

MR. HASHEM: Michael, let me see if I can clarify. Are you asking, as a business matter, are they trying to make a profit, or is as a matter of what regulations might require? I think that's just a lack of the -- lack of clarity there.

Q Do you have an understanding as to whether or not the regulations require that Elk's loans or investments make a profit for the company?

MR. HASHEM: Objection

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insofar as it calls for a legal conclusion.

(Clarification by the reporter.)

Q Mr. Feinsod, are you able to answer the question?

A I didn't hear -- like her, I didn't hear the end of it. Sorry.

What was the end of it?

Q Withdrawn. Let me restate the question.

A Great.

Q As a general business proposition, Elk makes its loans and investments to make a profit, correct?

A I don't recall if that was -- you know, where that would come in.

Q Okay.

Elk is an SBIC engaged in a financial transaction that affects its ability to repay a debenture to the SBA?

MR. HASHEM: Objection.

Calls for a legal conclusion.

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Q You can answer.

A I don't know.

Q Do you know what the -- what the debentures are between Elk and the SBA?

A Generally I'm familiar with them.

Q Generally, what are they?

A They were 10-year financing -- 10-year financings provided by the SBI -- by -- provided to the SBIC and guaranteed by the SBA.

Q And did Elk, as an SBIC, have an obligation to repay the SBA for the financing?

MR. HASHEM: Objection.

Calls for a legal conclusion.

A At what time frame?

Q We're talking generally.

Did Elk have a general obligation to repay the financing known as the debenture to the SB- --

A No, it had -- it had a specific obligation, known as the

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debenture, which contains terms and conditions.

Q Okay. And at some point, those terms and conditions required repayment to the SBA; is that correct?

A Among other things, correct.

Q Did you have an understanding as to whether Elk could participate in a financial transaction that would limit Elk's ability to repay the SBA on the debenture?

MR. SEIDEL: Objection to form.

A Yeah, I don't -- I apologize. I don't understand the question.

Q Do you have an understanding as to whether Elk can engage in a financial transaction that limits its ability to repay the SBA on the debenture as a creditor of Elk?

MR. HASHEM: Objection.

A I don't -- I don't understand what you mean by "limits its ability to repay." Are you talking about a

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specific period in time? Or when is -- what are you speaking of? Clarify the question. Thank you.

Q Generally, may Elk engage in a financial transaction that limits Elk's financial ability to repay the debenture to the SBA as a creditor?

MR. SEIDEL: Objection.

MR. HASHEM: Objection --

MR. SEIDEL: -- question.

MR. HASHEM: Let me see if I can help here. You know, you're asking about limiting ability to repay. There's no time frame, there's no specific transaction. So what you're really asking about is the content of some regulation.

So if you want to know if he's aware of a regulation that governs what kind of transactions that an SBIC can enter into, ask him that.

Q Are you aware if there are regulations that limit that deal with

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whether the SBIC is allowed to engage in financial transactions that may limit the SBIC's ability to pay the debenture back to the SBA?

A No, I'm not aware of any regulation.

Q Thank you.

As CEO, what is your role -- generally, what's your role for Elk as a small business investment?

A Managing the day-to-day affairs of the company.

Q And what is your -- is that role the same for AmeriTrans?

A No. My job at AmeriTrans is managing the day-to-day -- I'm sorry -- yeah, I was managing the day-to-day affairs of Elk, which represented over 95 percent of the company's assets.

Q When you say "the company," you're referring to 95 percent of AmeriTrans's assets; is that right?

A At different times, yes, inside of 99.

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Q Okay. What was the value of AmeriTrans's assets when it was approximately 95 percent?

A I don't recall.

Q What was the value of AmeriTrans assets when AmeriTrans assets represented approximately 5 percent of the companies's assets?

MR. HASHEM: Objection.

Mischaracterizes the prior testimony. He testified that

Elk's assets comprised 95 percent.

Q If Elk's assets comprised 95 percent, does AmeriTrans' assets comprise the other 5 percent?

A No. There could be other subsidiaries that it might be held in.

Q Were there any other subsidiaries of AmeriTrans Capital other than Elk?

A Yes.

Q Who were the other subsidiaries of AmeriTrans Capital?

A At what time?

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Q Between the period of 2011 to 2013.

A I don't recall specifically, but in general, I believe that they were Elk Capital Corp.; EAFC Holdings; EAFC Holdings I; EAFC Holdings II. There were several subsidiaries.

Q When you refer to Elk as holding 95 percent, which subsidiary were you referring to?

A Elk and its subsidiaries, which might have included those subsidiaries.

Q So would that --

A Some of those.

Q Okay. So were you referring to all of the Elk named subsidiaries?

A Yes.

Q Okay.

So -- and then who held the other 5 percent of the assets for the company?

A Either AmeriTrans or another subsidiary of AmeriTrans.

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Q During the period of 2011 to 2012, who were the other subsidiaries of AmeriTrans?

A I believe Elk Capital Corp. is one; and I don't recall the names of any others.

Q When we refer to Elk Capital Corp., are they one of the Elk entities that hold the 95 percent?

A No. It's a wholly owned subsidiary of AmeriTrans.

Q What asset did Elk Capital Corp. own?

A I don't believe any.

Q So if Elk Associates Funding Corp. and the related subsidiaries named Elk hold 95 percent and Elk Capital holds zero percent of the assets, who holds the remaining 5 percent the assets of the company during the period 2011 through 2013?

A To clarify, it ranged between 95 and 99 percent of the assets at Elk.

And to answer your question,

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AmeriTrans or a wholly owned subsidiary of AmeriTrans likely owned the remaining less than 5 percent.

Q You referred to Elk Capital as a subsidiary of AmeriTrans.

A Um-hum.

Q You stated that Elk Capital did not hold any of the assets of the company. Is there something you want to change with that testimony?

A You gave a broad time frame, so I'm going to qualify it by saying it was at the last date when I left, as much as I remember.

Q Right.

A I don't recall any assets in Elk Capital Corp.

Q Okay. Was there any other subsidiary of AmeriTrans that may have held assets constituting 5 percent or less than 5 percent of the company during the period of time 2011 to 2013?

A I don't recall the other subsidiaries.

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Q Okay. Is it that you don't recall the name the of the other subsidiaries, or you don't recall that there were other subsidiaries of AmeriTrans during the time period 2011 through 2013?

A Other than Elk, which was the bulk of -- which was AmeriTrans, there was no loans originated during the period that you referenced. So as CEO, I had -- there were only what might be referred to as legacy assets.

Q What are legacy assets?

A What -- the assets that would be in AmeriTrans that preceded my joining the company. And that's my term that I just coined.

Q And the legacy assets that AmeriTrans had while you were president and CEO of the company, approximately what were those assets valued at?

A At different times, between -- I don't recall, actually. I don't recall without numbers in front

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of me.

Q Okay. Do you recall a range?

A No, I don't, without numbers in front of me.

Q In terms of managing the day-to-day affairs of AmeriTrans and Elk, what would you generally do to manage the day-to-day workings of Elk and AmeriTrans?

A At what time?

Q During the period 2011 to 2013.

A 2011 to 2013, monitor the existing loan portfolio.

Q Um-hum.

A Review new investments, review capital raising opportunities, and consider -- just the other one as SBIC. The period that you speak was interrupted by litigation and some other issues.

Q Looking at the period of time 2009 through 2011, would your duties have been different in terms of

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operating AmeriTrans and Elk on a day-to-day basis?

MR. HASHEM: Objection. When you say "your duties," given the witness testified that he had a different position in 2009 to 2011. So the question shouldn't be construed to imply that we're talking about his duties as a CEO in the 2009 to 2011 time frame since he wasn't CEO at that time.

Q When did you become CEO of Elk and AmeriTrans?

A I don't recall, but I'm sure the record is --

Q Okay.

A You have that in the record.

Q From the time when you became the CEO of Elk and AmeriTrans, whether it was 2009 or 2010, what -- from that period of time until 2011, were there additional day-to-day duties that you had for AmeriTrans in addition to what you've testified to already?

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A I don't recall.

Q Do you recall what your duties were as president and CEO of Elk as an SBIC in terms of the day-to-day function?

A To manage the day-to-day affairs of the company. I just mentioned that. I thought we just went through that.

Q Okay. Is it the same for Elk as to was for AmeriTrans?

A AmeriTrans was 95 percent of Elk -- or 99 percent of Elk, so there were -- yes, at all times it was -- the business -- my day-to-day job at running AmeriTrans was managing the Elk -- was managing Elk's portfolio and assets.

Q In terms -- earlier today we were talking about the valuation reports that you prepared -- that management prepared of the loans and investments that were made on behalf of the company.

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Do you remember -- do you remember that?

A Yes.

Q Who at management would prepare those quarterly reports?

A During different time frames distinguishing, again, it was -- they would be prepared by -- initially by Silvia, Gary -- Silvia Mullens, Gary Granoff, and then I began to work with the -- when I joined management, I had assisted in the preparation of them.

Q Would there be someone in management as an employee that would help you with preparing the valuation reports?

A Silvia and Gary Granoff.

Q And anyone else as an employee of management that would help prepare the reports?

A Maybe Dominic.

Q When you refer to Dominic, are you referring to Dominic Granito?

A Yes, Dominic Granito, who was

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a controller. I would use information gathered by him through the LOS system.

Q Anyone else on staff as an employee that would help prepare the reports for the valuation --

A No.

Q -- of loans and investments at the company?

A No.

Q When you joined -- when you became president of AmeriTrans and Elk, did you have a salary?

A When I -- when I --

Q When you became president of AmeriTrans and Elk, did you have a salary? Were you compensated?

A Yes. I had an employment contract.

Q Okay. Under your employment contract, what -- what did your salary or compensation begin at?

A I don't recall.

Q When you -- when you -- do you recall what it rose -- what your

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compensation rose to as president --

A No.

Q -- and CEO of Elk?

MS. CLARKE: Objection.

Assumes facts not in evidence.

A I don't recall.

Q Do you recall what your salary was when you left Elk and AmeriTrans as president and CEO?

A I don't recall, but I'm sure the record contains it.

Q Okay. Do you remember approximately what it was?

A I don't recall. It was a long time ago.

Q If we -- do you recall -- when you were president and -- withdrawn.

In your discussions with Gary Granoff -- well, withdrawn.

Mr. Granoff was the past president and CEO of Elk and AmeriTrans, correct?

A At different times, yes.

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Q Did you have discussions with Mr. Granoff about what was required as to how to operate a small business investment company under the regulations by the SBA?

A I don't recall.

Q Did you have any discussions with Mr. Granoff about whether Elk could pay certain financial obligations of AmeriTrans' investments?

A I don't recall specifically.

MR. WEINBERG: If we could mark as the next exhibit, minutes at Tab 5, May 26, 2009.

(Meeting minutes dated Tuesday, May 26, 2009, was marked Exhibit 2, for identification, as of this date.)

Q While that's being -- the exhibit is being loaded, let me ask a question, please.

Did you have an understanding that when acting as president and CEO on behalf of that Elk as a small

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business investment company, that Elk was supposed to be operated pursuant to the SBA regulations?

A I believe so.

Q With respect to the board of directors -- withdrawn.

In terms of any decisions that the board of directors made on behalf of Elk, were those decisions generally supposed to be in compliance with the SBA regulations?

MR. SEIDEL: Objection to form.

Q You could answer.

A Yeah, could you rephrase the question, because SBA regulations, I don't believe -- I'm trying to figure out how the governed board decision.

Q When a board made decisions with respect to Elk, was it supposed to be pursuant to what is permitted by SBA regulations?

MR. SEIDEL: Objection to form.

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Q As a general matter?

MR. SEIDEL: Same objection.

A I don't recall.

Q Are board members, in their decisions or work, supposed to oversee the operation of Elk as an SBIC in accordance with the regulations of the SBA?

MR. SEIDEL: Objection to form.

A I'm having trouble understanding the question, maybe due to the form.

Q When board members operate -- oversee what management is doing, does the oversight include whether Elk is being operated as an SBIC pursuant to the regulations that exist from the SBA?

MR. SEIDEL: Objection to form.

A Yes, I believe so.

Q Okay. Was there a period of time where Mr. Granoff was acting as

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the CFO, or chief financial officer?

A Yes.

Q And was there a period of time where you became the chief financial officer?

A Yes.

Q Do you recall what period of time that was that you were the chief financial officer for AmeriTrans and Elk?

A I believe it was less than one quarter following Gary Granoff's resignation from the post. Less than 90 days, I believe.

Q During that period of time, do you recall what the general duties were of the chief financial officer for AmeriTrans and Elk?

A Not specifically.

Q Okay. Do you have an understanding of what the duties were generally of the chief financial officer for AmeriTrans and Elk during the period 2009 through 2013?

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A To prepare the financial statements was my primary responsibility.

Q And what was the general process that AmeriTrans and Elk followed with respect to preparing, reviewing, and approval of financial statements?

A There is two different -- repeat the question, please.

Q Sure.

When you refer to preparing financial statements, what financial statements are you referring to?

A With respect to Elk, the Form 468; with respect to AmeriTrans, the consolidated financials that were reported on Form 10-Q or 10-K.

Q Okay. And was there a process or procedure that Elk had in terms of drafting and reviewing the Form 468 before it's filed with the SBA?

A Yes.

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Q What was that general process and procedure?

A The form was prepared by management and sent to the board for approval -- review and approval, excuse me.

Q Was there an interim step where the draft 468 was sent to the audit committee prior to the board?

A Oh, I'm sorry. Correct. Yes, there likely was an interim step of the audit committee reviewing the Form 468 --

Q After the --

A -- prior to the board.

Q Oh, okay. And then the next step would be board review?

A Yes.

Q And the last step would be filing the -- signing the certification and filing the Form 468 with the SBA?

A With respect to Elk, the last step with respect to the 468 is probably filing it, if that's what

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you're looking for, electronically filing it with SBA with the attached schedule.

Q Okay. And are there certifications that are filed that are signed by -- on behalf of Elk of the 468?

A I believe so.

Q Okay.

And now the general practice as to the 10-Q and 10-K, would that follow the same procedure that you outlined or a different procedure in terms of the chief financial officer preparing the draft, sending it to the audit committee for review and approval --

MS. CLARKE: Objection.

Mis- -- oh, I'm sorry. I thought you were done. Go ahead.

MR. SEIDEL: Why don't you, please, start over, Steven.

Q What is the -- what is the general process for approval of the

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10-Q and 10-K filed with the SEC?

A Prepared by management, sent to the audit committee and the external auditors simultaneously. And management might make any small changes, and then a final -- a final presentation of that document is made to the board -- full board for approval.

Q When -- now, the 10- -- the general process to go to the external auditor, would that include the 10-K and the 10-Q?

A Yes.

Q And who acted as the external auditor for reviewing the 10-Q and 10-K for AmeriTrans?

A With respect -- Rosen Seymour Shapss and Martin were the external auditors who reviewed the quarterly statements and audited the 10-K and financial statements annually.

Q Do you know what the review was for the 10-Q that Rosen Seymour

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performed?

A What was the question?

Repeat the question, please.

Q You just said that the 10-K was an audited financial statement; is that correct?

A Correct.

Q And the 10-K is filed annually; is that correct?

A Correct.

Q The 10-Q is reviewed by Rosen Seymour; is that right?

A Correct.

Q What is -- do you know what the procedures or what constitutes the review that Rosen Seymour does with respect to the 10-Q?

A Not specifically, no.

Q Do you know what the audit is that Rosen Seymour performs with respect to the 10-K?

A I believe it's a PCAOB-compliant audit process, as detailed by the accounting oversight

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board.

Q Does AmeriTrans -- do you know, does AmeriTrans have its own plan -- an internal plan as to how the audit is to be conducted by Rosen Seymour of the 10-K?

A Could you repeat the question. AmeriTrans doesn't exist anymore.

Q We're talking about -- again, this entire deposition is about the period of time when AmeriTrans existed, and you were in management as president and CEO.

A I understand. But you said "does." So it would be "did." I'm trying to answer your questions as correctly as possible, so if you rephrase them, really I appreciate it.

Q For AmeriTrans, was there -- for the Rosen Seymour audit of the 10-K, did AmeriTrans have a plan as to how the audit was to be conducted by Rosen Seymour?

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MR. SEIDEL: Let me hear that back --

Wait, Mr. Feinsod, hold off a minute.

Could I hear that question read back please, Judy.

(Whereupon, the record was read.)

MR. SEIDEL: I'm going to object to the form the question.

MR. WEINBERG: I apologize for cutting you off. I'm withdrawing the question. Okay?

MR. SEIDEL: Yep.

Q Mr. Feinsod, you mentioned that Rosen Seymour conducted audits of the 10-K by the PCA?

A No.

Q What?

A No, that's not what I mentioned.

Q Okay. What did you mention?

A I mentioned that they were subject to the PCAOB accounting

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standards.

Q Do you know how Rosen Seymour conducted its audit of the 10-K for AmeriTrans?

MR. SEIDEL: Objection to form.

A No, not specifically.

Q Do you know what Rosen Seymour reviewed with respect to the company records in order to conduct its audit of the 10-K for AmeriTrans?

A In general, yes.

MR. SEIDEL: Objection to form.

Q What did Rosen Seymour review for the audited 10-K?

A Anything that was in the office, from the loan report to the bank reconciliations. Loan files, collateral files, they had full access to every document. Other than employee files, excuse me.

Q Did the external auditor review internal controls of the company

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for the audited 10-K that was filed for AmeriTrans?

A I believe they did.

I'm sorry. I need to qualify that. At certain periods of time I believe they did. It wasn't required. When it became required under SEC laws -- under SEC regulations, they did. So I don't know when that changed.

Q Was the review -- was the auditors' review of the internal controls required during the period 2011 through 2013?

A I believe it was.

Q Do you know what the review was that Rosen Seymour conducted with respect to AmeriTrans's internal controls regarding the audit for the 10-K?

A No, I would not know that.

Q Now, at what point -- generally, in terms of the 10-Q and 10-K -- withdrawn.

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When would the review of the 10-K go to Rosen Seymour in relation to the process of the audit committee reviewing the draft 10-K and/or the board reviewing the draft 10-K prior to being filed with the SEC?

A They would receive a copy somewhere between on the way to the audit -- when the audit committee had signed off on the document, what we believed was the final document.

Q When you say "the final document," referring to after the audit committee approved the 10-K or after the board --

A Yes.

Q -- or after the board approved the --

A They'd receive it before -- they would receive it before the board. It was always reviewed by the auditors before the board signed off on it.

Q Okay. And then after the board signs off, that's when the

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certifications are signed for the company and the 10-K is filed with the SEC; is that correct?

A With respect to the 10-K, yeah. Yes.

Q Now, with respect to the 468, was there a quarter or an annual 468 that was reviewed by Rosen Seymour as auditor?

A I believe so.

Q And was -- in terms of which --

A Can I clarify?

Q Sure. Sure.

A I believe Rosen Seymour was also specifically engaged by Elk to prepare standalone financials each year.

Q So is that an annual financial statement?

A Standalone annual financial statements.

Q And that would be an audited financial statement; is that correct?

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A Yes.

Q And with respect to the quarterly, or what would be an annual 468, do you know which 468 was audited by Rosen Seymour?

A The annual, I believe.

Q Okay. Do you know if the quarterly 468s were generally reviewed by Rosen Seymour?

A I believe they were.

Q Do you know where in the process of reviewing the 468s any review would have occurred by Rosen Seymour?

A I -- just trying to distinguish that from the last question. Could you restate it.

Q Sure.

Elk would -- the chief financial officer would have -- would have management-prepared draft 468s; is that right?

MS. CLARKE: Objection.

Mischaracterizes the testimony.

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Q Management would prepare draft 468s; is that right?

A Management would prepare draft 468s, that's correct.

Q Who in management would prepare a draft 468 generally during the time 2009 through 2013?

A I believe it would be the controller, and then the information generally came from OLS and was fed into the Form 468 direct -- it was self-populating program. And then that report would be reviewed for, I guess, human errors or anything. And that it was -- it was a somewhat automated process.

Q And who on behalf of management would review that draft report?

A From time to time, I believe the CF -- I mean, it would be the CFO who would ultimately certify it at the time, so it was either Gary Granoff or myself. But while I was president, I

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always reviewed it.

Q And at what point in the process after management prepares the draft 468 would the report go to the audit committee or the -- Rosen Seymour?

A It would go to -- it would generally go to the audit committee -- Rosen Seymour after the audit committee had approved it.

Q Rosen Seymour would conduct its review of a quarterly 468; is that correct?

A I believe so, yes.

Q And they would -- Rosen Seymour would conduct its annual audit of an annual 468; is that right?

A I'm going to just -- they appropriated audit the standalone financial statements of Elk. Whether or not the Elk 468 was audited, I'm not sure. There is a technical difference between them.

Q Do you know what would

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constitute --

Okay. So you don't know if the annual 468 was separately audited by Rosen Seymour in addition to the annual audited financial statements?

A I don't recall. But I believe an annual 468, if it was audited, would say "audited" on it. So if you have any exhibits, that might be helpful in jarring my memory.

Q And if it doesn't say "audited," then the 468 was not audited with -- with -- by Rosen Seymour; is that right?

A It would generally say "unaudited" specifically if it wasn't audited.

Q Do you know if there -- do you know if there are two different forms for 468 between the audited form and a quarterly 468?

A I don't. I don't recall.

Q Do you know if there is something that's called a short form

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468?

A I don't recall the structure of it.

Q In terms of -- okay.

Would it then follow the same procedure after the 468 is reviewed, or it's the annual 468, reviewed or audited by Rosen Seymour, does the 468 then go to the board for final approval before filing?

A Yes.

MS. CLARKE: Object to form.

A It did.

Q Do you know what review Rosen Seymour conducted with respect to a quarterly 468 that's not an annual audit?

A I don't. I'm not an auditor.

Q Do you know what the audit consisted -- do you know what Rosen Seymour did to perform the annual audit for the annual financial statement of Elk?

A I believe I explained it

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before generally.

Q Were there internal controls that related to the annual audit for Elk?

MR. SEIDEL: Objection to form.

A The audit wasn't done by Elk; it was done by auditors. So the controls -- we wouldn't have controls. The question doesn't make sense.

Q Were there internal controls for Elk that the annual auditors would review when preparing the Elk financial statement?

A I believe so.

Q Do you know what that review would consist of?

A I don't.

MR. WEINBERG: If we can refresh the exhibit. I'm sorry. Do we have Tab 5, the May 26, 2009, minutes?

MS. BILODEAU: They're marked Exhibit 2, if you refresh.

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Q Is Exhibit 2 open, Mr. Feinsod?

A Yes. I'm reviewing it.

Q Okay. After you've had a chance to generally review, if you would just tell us what Exhibit 2 is.

A Okay.

Okay.

Q Generally, what is Exhibit 2, please?

A It's a -- minutes of a board meeting of Elk Associates Funding and AmeriTrans Capital held on May 26, 2009.

Q If you would look at the bottom of page 2, the last paragraph continuing on to the top of page 3.

The discussion: Mr. Granoff then interjected that the life settlement investments still required premiums to be paid and he any further added that the funds to pay the life settlement premiums could not come from the sale of Elk assets since that would

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violate SBA rules and regulations since these were AmeriTrans' assets.

Do you recall that discussion?

A I don't.

Q Okay. Do you recall reviewing or learning at any time that the sale of Elk's assets -- the proceeds of the sale of Elk's assets, using that to pay life settlement premiums would violate SBA rules and regulations because the life settlement policies were AmeriTrans' investments?

MR. HASHEM: Objection to form.

A No, I don't recall this.

Q Okay. Did you subsequently, after 2009, ever have a discussion about that topic, whether or not the sale of Elk's -- proceeds from sale of Elk's assets could be used to pay the AmeriTrans life settlement premiums?

A I don't recall specifically.

Q At the bottom of page 3, the

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next-to-last paragraph: Mr. Feinsod then stated that for the company to be profitable it required 35 million in performing assets.

Do you see that statement?

A I do.

Q In terms of "the company," are you referring to AmeriTrans and Elk on a consolidated basis? Is that right?

A I don't recall. I did not keep the minutes. I was not the secretary.

Q Do you know -- well, in terms -- do you remember making a statement that in order for the company to be profitable, it required 35 million in performing assets?

A I don't remember.

Q During the period of time 2009 through 2013, was Elk generally operating the at a profit or a loss?

A I don't recall.

Q During the period of time

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2009 to 2013, was AmeriTrans generally operating at a profit or a loss?

A I don't recall.

Q During the period of time subsequently, 2011 to 2013, was AmeriTrans operating at a loss?

A I don't recall financial performance from 10 years ago.

Q Okay. Do you recall as to what the level of activity you needed for performing loans in order for Elk or AmeriTrans to be profitable?

A No, I don't recall.

Q Did you -- would you have done some sort of analysis in order to determine what level of performing loans were necessary in order for a company to become profitable?

A Could you repeat the question.

Q Sure.

As a part of your duties with respect to AmeriTrans and Elk, would you do an analysis as to what the

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amount of performing loans is necessary in order for a company to become profitable?

A I apologize. I need to take a break and restate something.

The exhibit isn't -- is actually not what -- as I described, now that I'm looking at it. So I would like to -- to answer that question, to revisit that. There's actually two copies of minutes here in this exhibit. And I'm trying to understand what's -- I'm a little confused.

Exhibit 3 -- Exhibit 2 is what? Should be -- when we talk about it, it looks like it's actually two copies of board minutes.

Q Is one draft, an unsigned copy of board minutes, and the another one is a signed copy by Lee Forlenza who acted as a secretary of the meeting?

A Okay. Is there a difference between the two copies?

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Q I don't know. I'm asking you about the signed copy. That's the first five pages.

A Okay. I apologize. Because when I looked at it, I thought I was looking at one document. Now I realize that it's actually two documents, so.

Q I'm only asking you about the one document, the signed exhibit, the signed copy of the board minutes for May 26, 2009. It is the first six pages of the document.

A In order to refresh my memory, I'm just trying to understand what the changes are from the draft copy, which appears to be a draft copy attached to the same exhibit.

It's very confusing and difficult to answer your question.

Q I'm simply asking about the entries on the signed copy of the minutes.

A Okay. So restate your question.

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Q In 2009, would you prepare an analysis as to the value of performing loans that was necessary for the company to become profitable?

A I may have.

Q But you don't recall; is that right?

A I don't recall.

Could I put this exhibit away? Are we done with this?

Q No, we're not.

If you go to page 3 -- I'm sorry. Page 4?

A Of the PDF or of the --

Q Of the PDF.

It's -- again, we're in the first page, PDF page 4, of the signed copy of the minutes.

A Um-hum.

Q It is the paragraph beginning: Mr. Boockvar asked what was the timeline to decide whether the company would be liquidated --

Do you see that paragraph?

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-- if Elk was unable to obtain SBA leverage commitment?

A Okay.

Q Does this paragraph refresh your recollection that at this point in time, Elk was waiting for an SBA leverage commitment?

A Yes, it does at this -- an overdue one at this point.

Q I'm sorry. What?

A An overdue commitment.

Q Oh. And do you remember what the amount was of the commitment by the SBA with respect to a debenture that was in 2009?

A You gotta repeat -- please repeat the question.

Q Do you know how much of a commitment Elk was seeking -- or withdrawn.

Do you know Elk obtained with respect to a commitment from the SBA for an additional leverage or debenture?

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A Yes.

Q How much was that?

A After 12-month delay, I believe it was \$11.1 million.

Q Now, there was a discussion here that -- if you review that paragraph, that if the SBA did not make the leverage commitment, the company would look 4 to 6 months for a merger partner before proceeding to liquidate the company's portfolio.

Do you see that?

MR. HASHEM: Objection to form.

A Yes, I see it.

Q Okay. What was the -- and you -- what was the basis -- well, in terms of your response, was that a -- what you felt at the time was a reasonable amount of time to look for a merger partner before considering other alternative plans, such as liquidation?

MR. HASHEM: Objection to form.

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A Given the specific time of May of 2009, as of that date, that was -- that was my belief, which I would put in the context of what was going on in the financial markets.

Q Okay. And had you prepared what would be a proposed liquidation plan for the board to review with respect to the company?

A I don't recall.

Q Is that something that you would do as a part of your duties for the board to consider?

A If requested under special circumstances potentially.

It was not a normal course of -- it was not a regular financial -- it was not a regular preparation by any means.

MR. WEINBERG: The exhibit for May 22, 2009. I believe it's Tab 2.

(Memo dated May 22, 2009, was marked Exhibit 3, for

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identification, as of this date.)

MS. BILODEAU: It's been marked Exhibit 3. You can refresh.

Q When you're able to Exhibit 3, please generally review it and tell us what it is.

A Okay. I have generally reviewed it.

Q Okay. You did?

A Yes.

Q Do you recognize the document?

A Yes.

Q Okay. Does it refresh your recollection as to your memory preparing the document --

A No.

Q -- dated May 22, 2009, Financial Projections?

A Slightly, yes.

Q The document on page -- there is a summary of a consolidated balance sheet on page 1; is that right?

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A I believe so, yes.

Q There's a chart of --

A The date is wrong on the consolidated balance sheet.

Q Okay. What should be the date be?

A I can't tell. One has 2009, and then one says 2008.

Q Okay. So there might have been a typo on the document.

In terms of page 2 as a category of investments; is that right?

A Page 2, company and invest- -- I think it speaks for itself. It's says a -- it's a summary of what quote/unquote investment asset.

Q Okay. Page 3 is titled: Liquidation Analysis; is that right?

A That is the title.

Q Page 4 has a title: Employment Contracts; is that right?

A Yes.

Q If you look down for fiscal year 2010, is -- your employment

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contract, does that refresh your recollection as to what your compensation was for fiscal year 2010 for the company?

A On that page, you're saying the six employment contracts?

Q Yes. You're listed as one of the employment contracts.

A Okay. That refreshes my memory, yes.

Q Did you receive compensation of \$175,540 for your work on behalf of Elk and AmeriTrans for fiscal year 2010?

A I don't recall what I actually received.

Q Would it have been approximately that amount?

A Most likely it was, yes.

Q And your employment contract, what -- what benefits -- do you remember what benefits were?

A No.

Q Do you know what it did --

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I'm sorry.

Do you know what additional benefits the company, Elk and AmeriTrans, paid on your behalf?

A I believe we had a -- Elk had a -- what is it called -- the SEP. It's similar to an IRA, I believe.

Q Right.

A So Elk had set that up for all its employees, and each of the -- I was not receiving the SEP. Gary Granoff and each of the other employees were receiving the SEP due to -- I didn't -- so I might have received maybe expense reimbursement, which was probably -- I don't -- I mean, I assume it was business expenses.

Q If we go to -- then there -- the next four pages include various charts. And chart C or chart D in the last two pages talks about models for operating the company or alternatively if the company has to liquidate.

A Where is chart C and D -- is

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there a chart C and D?

Q C and D.

A Is there a chart C and D in this memo? I don't see it.

Q On the --

A I see the summary -- I don't -- I see a summary. Mine ends on chart D on a half a page with no pictures, no charts.

Q Okay. On the last page, says chart D as in David?

A It says chart D, but there is no chart.

Q Okay.

A There's one -- there's various bullet points with respect to charts C and D but there are no charts C and D. I don't know what they refer to -- or even chart A and B doesn't show up in my -- there are no charts in my --

Q Okay.

A -- exhibit.

Q That's what the exhibit is.

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It says chart A, but there is no chart, there are just bullet points.

Does this refresh your recollection as to whether or not, after 2009, you prepared any models or analysis for a liquidation plan for the company?

A With respect to this data, yes, it does.

Q Okay. It refreshes your recollection that you prepared this document to set forth different models as to how the company would operate or liquidate depending upon what happened with respect to the leverage --

A I don't -- I don't remember the preparation of this memo at all, but I'm looking at it.

I can read the memo.

Q Okay.

A And review it.

Q What I'm asking, after this memo was prepared, does this refresh your recollection whether or not you

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prepared any subsequent memos outlining models as to how the company would operate or liquidate its assets?

A Not specifically, no.

Q Do you remember generally if you would have done that as a part of your duties as president and CEO for Elk and AmeriTrans?

A No, not generally. This was when we were waiting on the debentures inexplicably.

Q Uh-hum.

A And that was what was causing the consternation of doing this analysis if we don't get the money. So it wasn't a -- you would never characterize it as a regular occurrence. This was prepared due to the delay in getting SBA debentures.

(Clarification by the reporter.)

A In receiving SBA debentures.

Q You can put that away. We can go to a -- can we go to the 468 for

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December 31st, 2010.

A I'd like to take a break soon.

Q Sure. Should we take our half hour lunch break now?

A Fine with me.

VIDEOGRAPHER: This will end Media Unit 2. Going off the record at 12:24 p.m., October 28, 2021.

(Whereupon, a lunch recess was taken at 12:24 p.m.)

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AFTERNOON SESSION

(Time noted: 12:57 p.m.)

M-I-C-H-A-E-L R-O-S-S F-E-I-N-S-O-D,

Resumed, having been previously sworn by a Notary Public within and for the State of New York, was further examined and testified under oath as follows:

VIDEOGRAPHER: We're back on the record. The time is 12:57 October 28, 2021. This will begin Media Unit 3.

CONTINUED EXAMINATION BY MR. WEINBERG:

Q Good afternoon, Mr. Feinsod. If you would refresh your exhibit and go to Exhibit 4, please.

A Exhibit 4. Okay.

(Form 468 as of 12/31/10, was marked Exhibit 4, for identification, as of this date.)

A Okay. I have the exhibit.

Q Okay. Great. Would you -- now that you're able to open the exhibit, can you look at it just generally and just tell us what the

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Exhibit 4 is.

A It's multiple -- it's at least one copy, if not multiple copies, of this same 468 -- a form 468, but there's multiple -- again, there's multiple copies there.

Q Okay. And is this the 468 for the six months ended December 31st, 2010?

A The first page says that, yes. I can go to every page and confirm it.

Q I think we -- if you feel you have to, but I think we can let go with just the first page.

A The first page is the first page of a 468 dated -- yes.

Q Okay.

You had mentioned there's multiple copies. If you go to the last page of the 468 --

A This is what page of this document, of the 41-page document?

Q Page 41.

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A Great. Thank you.

Got it.

Q Okay. And do you see the --

What is that page called,
page 41?

A It says: Quarterly
Certifications.

Q Okay. And that's for Elk
Associates. And what is -- we have the
management certification; is that
right?

A I'm reviewing it. Give me a
second.

Yes.

Q What is the management
certification?

A It's the box that -- the box
with a pre-written paragraph. Do you
want me to read the paragraph into the
record?

Q No, no. Is the management
certification the certification by
Richard Feinstein as the chief
financial officer as to the accuracy of

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the 468 that's filed with the SBA?

A It doesn't say "accuracy," it
uses the words "true and correct."

Q Okay. And the secretary
certification is by Silvia Mullens as
secretary. Is that stating when the
468 was reviewed and approved by the
board of Elk Associates Funding Corp.?

A Yes.

Q Okay. And if we go to
page 2 -- before we go to the pages, in
terms of looking at the 468 for 12/31,
is this -- is this -- 2010, is this an
audited 468 or just a short Form 468?

A I would assume this was not
audited.

Q Okay.

A I don't know what -- I don't
know what "short form" refers to.

Q Okay. On the -- in terms of
the audited 468 would be on the annual
term or the fiscal year when Elk
reported; is that right?

A Yes.

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Q And did Elk operate on a
June 30 fiscal year?

A Yes.

Q And in -- and the quarterly
468 that -- when you described what the
general practice was, that would be the
468 that is reviewed by the external
auditors as opposed to audited by the
external auditors; is that right?

A The distinction is that it's
not audited quarterly; is that your
question?

Q Yes.

A Okay.

Q Yes, that it's only reviewed;
is that right?

A Yes.

Q If we go to page 4C, net
income or loss, it's line 39.

A What page of the PDF?

Q Well, if we just go to the
fourth page of the PDF.

A Okay. Got it.

Q Tell you what --

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A I'm sorry. I'm there.

Q I'm sorry. Bear with me one
more second.

Okay. If you go to page 20
of the PDF.

A I believe I have the right
page. Investment Income.

Q Let's see. Do you have a
page 4C in the lower right-hand corner?

A Yes.

Q Okay. Line 39.

A Yeah.

Q Net income or loss?

A Yes.

Q What is the net income or
loss for the period ending December 31,
2010, for the six months?

A Negative 332,387.

Q Okay. So does that refresh
your recollection that for that quarter
was Elk operating at a profit or a
loss?

A It speaks to six months, I
believe, right? So I don't know about

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a quarter.

Q Okay. So in that six-month period, was Elk operating at a profit or a loss?

A For the six-month period ended 12/31/10, Elk operated at a loss.

Q Of 332,987; is that right dollars?

A No. It's not.

Q What is the amount again? I'm sorry. Would you read the dollar amount?

A Negative 332,387.

Q Okay. \$332,387 loss, right? Is that right?

A Yes. That's what it says.

Q Okay. If you go to -- if you scroll up to page 2C, which I think is page 18 of 41.

A Okay.

Q Do you see line 24: Other, Due from parent?

A Yes.

Q What is the due from parent?

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A It is an amount due from AmeriTrans Capital Corp. to Elk Associates.

Q And as of that -- I'm sorry. I didn't mean to interrupt. Were you finished?

A I was.

Q As of December 31st, 2010, how much it AmeriTrans owe Elk?

A 1,436,726.

Q \$1,436,726; is that right?

A Yes.

Q Do you know generally what made up the due from parent at that time for the period ending December 31st, 2010?

A I want to answer, but could you just read that again. Do I know what?

Q Sure.

The due from parent, was that an allocation of expenses between Elk and AmeriTrans?

A It represented -- it

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represented the balance due from AmeriTrans -- from Elk to AmeriTrans, yes.

Q And how was that number -- how was the amount derived at?

A A variety -- a variety of factors went into it. This ties to -- so if I remember correctly, this ties to -- this form is generated automatically --

Q Um-hum.

A -- from a -- from a variety of sources, that full information using the SBA's chart of accounts. So this ties to the SBA regulation that would create -- that would be described under this.

Q Do you know what regulation?

A It's in the chart of accounts. If you have one handy, I'm sure I could find it quickly.

Q Okay.

A When you form an SBIC, the chart of accounts is given by the SBA

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to the SBIC, and then they create the 468 each quarter flows from that accounting system. And then I believe SBA creates accounts -- reports on their end using this information.

(Clarification by the reporter.)

A On their end.

Q For the \$1,436,726, are those expenses that Elk paid for on behalf of itself and AmeriTrans?

A I don't recall as of this specific day.

Q Okay. I'm talking about generally. At this time, for the period of time before December 31, 2010, did Elk make any advances or loans to AmeriTrans?

A To AmeriTrans or on behalf of AmeriTrans, yes, both, from time to time.

Q Okay. Did Elk do that before December 31, 2010?

A Yes, absolutely.

FEINSOD

Q What -- what advance or loan did Elk make to AmeriTrans before December 31st, 2010?

A If you could pull up a previous 468, it might provide some information.

This statement is cumulative, so I can't tell what -- from -- the period from when this was generated.

Q But the prior 468 would have what was cumulative from the prior period in terms of the dollar value, correct?

A Yes, it should.

Q If we can go to the general ledger for the next exhibit.

(Intercompany Balance Per G/L 7/1/2012, was marked Exhibit 5, for identification, as of this date.)

MS. BILODEAU: That has been marked Exhibit 5.

Q Let us know when you are able to open up Exhibit 5.

FEINSOD

A I have it.

Q Could you tell us what Exhibit 5 is, generally.

A It looks like work papers referring to the intercompany balance with AmeriTrans.

Q Okay.

A Between AmeriTrans -- I'm sorry. Its -- has its title at the top, I think is accurate.

Q Okay. Thank you.

A Would you like me to -- if you'd like me to read it, I will.

Q Intercompany Balance with Ameri- -- it says: Elk Associates Funding Corp. Intercompany Balance With AmeriTrans Capital Corporation.

If you do the fourth page of the PDF.

A Okay.

Q Okay?

A Yes, sir.

Q It has an intercompany balance between the period July 21st,

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2009 through June 8th of 2010; is that right?

A Correct.

Q And --

A That is correct.

Q -- the intercompany balance that it's showing in the general ledger is \$207,363.36 -- I'm sorry -- \$207,353.36; is that right?

A On the -- at the bottom, yes.

Q Okay. And it's showing various payments is it -- that Elk made on the -- in connection with the intercompany; is that right?

A It's showing both payments, and it's showing allocation of expenses that was performed at the end of each quarter.

Q Okay. What are the payments that it's showing? What is Payment MF payroll, with a date?

A I don't know.

Q Do you know generally what the payment is referring to for the

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entry Payment MF payroll, and with the date July '09?

A An allo- -- yes, it may be an allocation of my, Michael Feinsod -- because I'm probably MF -- for the month. I can't tell for -- as indicated on a monthly basis.

Q Okay. At this point in time, were you paid your salary by AmeriTrans or Elk?

A I was always paid my salary by Elk.

Q Your payment that's being allocated to the intercompany balance is showing a negative, is that -- on the -- on the sheet that we're looking at page 4; is that right?

A Yes, it looks like it is, yes.

Q So did you receive any payments from AmeriTrans that would have been credited to the intercompany balance that AmeriTrans owed Elk for your salary?

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A It was technical -- please repeat the question. Would I have received?

Q Any payment of your salary from AmeriTrans that would have been credited to Elk on the intercompany balance that AmeriTrans owed Elk?

MS. CLARKE: Objection.

A I don't know the components that make up the pages -- the payments --

Q Okay.

A -- or the allocation from the one in this information I don't know what's in those quarterly allocations.

Q But your payroll -- okay.

Your salary, generally, as you understood it, you were paid by Elk, and a portion of your salary was credited to AmeriTrans and a portion was accredited to Elk; is that right?

A Yeah. I believe that is correct.

Q Okay. And do you know how

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the allocation was made as to how much Elk would be responsible for and how much AmeriTrans was responsible for?

A I don't specifically. I believe it was tied to the percentage of assets that were related to Elk.

Q Do you know if that changed during the period of time 2010 through 2013?

A If what changed?

Q If the -- a formula allocating your salary based upon a percentage of assets owned by Elk, was that -- was the use of a formula based upon a percentage of assets changed during the time period 2010 through 2013?

A I don't recall.

No, I don't recall it at all. I wouldn't be involved at that level of detail.

Q There are various entries here, allocation of expenses. Generally, what is your understanding

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as to allocation of expenses on the intercompany balance?

A Pursuant to -- we had a formula whereby which certain -- certain expenses were allocated to either Elk or AmeriTrans based on a percentage of assets held at each entity. And it was a backward-looking adjustment made at the end of each quarter. And I note that this -- I guess from this it seems that the intercompany balance is reduced during this quarter, right?

Q Right.

A Great.

Q There is even a payment on December -- on January 20th of 2010, a payment of the intercompany balance was entered; is that right?

A On 1/20/10 I see a payment. Is that what you're referring to?

Q Yeah, yeah.

A Okay. I see what you're referring to.

FEINSOD

Q Of \$162,821.65, right?

A That's what it says, yes.

Q Okay. The -- now, when you say the -- there was a formula allocating expenses based upon percentage of assets owned by Elk and AmeriTrans, was that -- was that same formula applied to different types of expenses?

A I wasn't intimately involved with the formula.

Q Do you know what types of expenses the formula was applied -- a formula was applied to?

A I don't recall specifically, but I'm sure it's detailed in the financial statements.

Q Do you know if -- was it just your salary, or was it also employees' -- other employees' salaries that were allocated pursuant to a formula for the intercompany?

A As I said, I don't know the mechanics or the -- I don't remember

1 FEINSOD
2 the details of the allocation, but I'm
3 sure there is documentation that might
4 be helpful -- so. And I guess these
5 aren't signed, I've got to point out,
6 so I don't know if these are final.
7 Q Okay.
8 A And this whole exhibit looks
9 like it could be a draft.
10 IT CONCIERGE: Excuse me.
11 This is Bob. It looks like Ray
12 may have dropped off. I don't
13 know if that was intentional.
14 MR. WEINBERG: I'm sure not.
15 Should we go off the record,
16 Elizabeth?
17 MS. CLARKE: He says he is
18 looking for a better WiFi signal
19 and we could keep going in his
20 absence.
21 Thank you. Thank you for
22 letting us know.
23 Q Do you know if these are
24 excerpts -- these are excerpts from the
25 general ledger that are part of Elk's

1 FEINSOD
2 records.
3 A But they're not signed, so
4 are they -- they drafts or are they --
5 Q Mr. Feinsod, the -- these are
6 copies of Elk's general ledger that
7 were produced in discovery. If you go
8 to -- do you know if rent was or lease
9 payments were allocated by a formula?
10 A I believe they were.
11 Q Rents, salaries, does that
12 refresh your recollection as to what
13 other expenses were allocated between
14 Elk and AmeriTrans?
15 A No. With respect to rent, it
16 does.
17 Q Okay. If you go to the third
18 page of the PDF.
19 A Okay. A draft of the
20 intercompany balance work papers.
21 Q Okay. It's titled: Elk
22 Associates Funding Corporation
23 Intercompany Balance with AmeriTrans
24 Capital Corporation Operating Expenses,
25 correct?

1 FEINSOD
2 A Correct.
3 Q That's the title. Okay.
4 Before December 31, '10, and including
5 December 31, '10, are the entries:
6 Allocation of expenses and MF payroll?
7 A Yes. Yes, they are the items
8 that you mentioned.
9 Q Okay. So for the --
10 A For specific periods, okay.
11 Q Yes. So for the specific
12 period from July 1 of 2009 through
13 December 31, 2010, on this document, do
14 we have any entry that's in advance or
15 a loan from Elk to AmeriTrans?
16 A There's the allocation of
17 expenses.
18 Q Right.
19 A And -- okay. So -- I see the
20 four items that you mentioned. That's
21 all I see.
22 The three entries that you
23 mentioned, those are the only three
24 that are there, yes.
25 Q Meaning payment, FM payroll,

1 FEINSOD
2 and allocation of expenses, and
3 payments to the intercompany balance;
4 is that right?
5 MR. SEIDEL: Objection to
6 form.
7 A I apologize. Where is
8 payment to intercompany balance?
9 Q Payment of intercompany
10 balance that was January 20th of 2010
11 on page 4.
12 A I'm sorry. You had me
13 looking at page 2. Okay. So we're
14 looking -- we're talking about page 2
15 now, right?
16 Q No, we're actually -- sorry.
17 What -- we first looked at
18 page 4, we then moved --
19 A Yes.
20 Q -- we then moved to page 3.
21 Pages 3 and 4 --
22 A Yes.
23 Q -- cover the period of time
24 July 1, 2009, through December 31,
25 2010, correct?

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A Page 2. Do you want to go -- you're going backwards and forwards. So you want to go in one spot and go forward? That would be more helpful for me. You're jumping around and asking me to -- to dates that are going backwards, so -- with documents that have worked forwards. I apologize.

Q I'll restate the question so it's --

A Yeah.

Q -- easier for you, okay?

On page 4 --

A Yes.

Q -- we had allocation of payments for MF payroll and allocation of expenses, and a payment of an intercompany balance; is that correct?

A Yes, that is correct.

Q Okay. Is there anything on page 4 that's an advance or loan from Elk to AmeriTrans?

MR. HASHEM: I'm going to object insofar as --

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A I'm sorry.

MR. HASHEM: -- you're calling for legal opinion on what an advance or a loan is.

(Clarification by the reporter.)

MR. WEINBERG: I'm sorry. I thought you were done, Ray.

Ray, I apologize.

MS. CLARKE: Your audio is not coming in clearly.

MR. HASHEM: I'm done. Steven, sorry.

MR. WEINBERG: That's all right.

Q Is there any other description on page 4 other than payment of FM payroll, and allocation of expense, and a payment of an intercompany balance?

A No, I don't believe there is.

Q Okay. So there is no other description for any entry on the intercompany balance, per the general

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ledger on page 4; is that right?

A On this unsigned draft, correct.

Q Okay. The one that says work paper on top and an account member. In terms of the page 3, is there any description other than payment of MF payroll, and allocation of expense, and a Duff & Phelps invoice paid by AMTC?

A No, there is none.

Q Is there any description that talks about a loan on page 3?

A No.

Q Is there any description on page 4 that talks about a loan?

A No.

Q All right. Now, if we go to June. Let's put this away. We'll come back to this. For Exhibit 6, can we have the June 30, 2011, 468.

(Letter dated 10/3/11 with attachments, was marked Exhibit 6, for identification, as of this date.)

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MS. BILODEAU: That's been marked Exhibit 6. You can refresh.

Q If you've a chance to open Exhibit 6 and could briefly look at it, and tell us what is Exhibit 6.

A It looks like a -- it looks like the -- what we would refer to maybe as the hard copy submission of the 468. And the only reason I'm saying that, meaning the cover letter says it was -- this is the three paper copies that were filed with the SBA of the annual Form 468, probably, because the accountants' opinions in the standalones were included. I don't see the standalones, I'm sorry, I see the opinion. I don't see the standalone financials.

Q When you say the "standalone," what are you referring to?

A On page -- page -- I'm sorry -- page 2 of the PDF, there is

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the first page of the auditors' --
there's the auditors' opinion.

Q Right?

A And I would have thought that
this hard copy would include financial
statements with notes, but I don't see
them.

Q Okay. So would the --

A So this is -- this looks like
part of an annual Form 468 filing, this
paper version of it.

Q Okay.

If we can -- just bear with
me one second.

Can we look at the next
exhibit, the annual audited financial
statement for the period ending
June 30, 2011.

(E-mail dated 10/3/11 with
attachments, was marked Exhibit 7,
for identification, as of this
date.)

Q While that's being loaded,
would you go to the last page of the

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PDF?

A I'm sorry. I went back out.
So you want me to go back into
Exhibit 6?

Q Yes.

A Okay.

Q Exhibit 6 is a 53-page
document; is that right?

A Yes, but I thought you were
loading 5, so -- I mean, I thought you
were loading a new exhibit.

I got it. Got it.

Q And Exhibit 6 is for the
annual period ending June 30, 2011; is
that right?

A June 30, yes, it looks to be.

Q Okay. So that would have
been -- is it your testimony that the
annual 468 would have been submitted
with an annual audited financial
statement from the auditors for Elk?

A The electronic version would
be filed without it. And I believe the
paper version would be mailed with the

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auditor's report. Yes.

Q If you look at the last page
of the PDF, does it have the
certifications signed by management and
the secretary?

A It has a management
certification signed by the chief
financial officer, and it has a
secretary certification similar to the
one we described before.

Q Management certification
being that from Richard Feinstein,
chief financial officer, that the
information is true and correct; is
that right?

A Yes, and I guess this one
maybe adds tax returns to its title.

Q And the secretary
certification that the 468 was approved
at a board meeting, signed by Silvia
Mullens, the secretary; is that right?

A That's what this -- yes,
that's what this document is.

Q And if we go to page 4C,

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which is page 6 of the PDF, line 39 for
the period ending June 30, 2010, was
Elk operating at a profit or a loss?

A Hold on. I didn't get to the
page yet.

I can't tell from this
statement. It doesn't -- this is not a
P&L. This is a balance sheet.

Q What's reported on line 39
for net income or net loss? 39.

A You're on page 6 of the PDF,
right?

Q Page 6 of the PDF -- well,
I'm sorry. I'm sorry. I misread my --
would you go to page 7 of the PDF. It
should be page 4C at the lower
right-hand corner.

A Okay. If you give me a
minute, I'll get there.

Okay. I'm at that page.

Q Line 39, net income or loss,
was Elk operating at a profit or loss
for the period ending June 20, 2011?

A For the 12 months ended

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6/30/11, this -- this document says that it was operating at a loss.

Q That was a loss of \$1,010,290; is that right?

A That's what it says.

Q If we look at page 2C, which is page 4 of the PDF.

A I think you're wrong. I believe it's page 5.

Q Are you there, page 5 of the PDF?

A I am.

Q Line 24, due from parent?

A 2,949,442.

Q \$2,949,442; is that right?

A Yes.

Q That's the amount that AmeriTrans owes Elk as of June 30, 2011; is that right?

A Yes, this Form 468 says that.

Q Okay. As of June 30, 2011, is that number represented by allocation of expenses only, or does it include loans from Elk to AmeriTrans?

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MR. SEIDEL: Objection.

MS. CLARKE: Objection.

Calls for a legal conclusion.

A It's a cumulative -- it's a cumulative number that is a loan to AmeriTrans.

Q I'm sorry. What?

A It's a cumulative number that is due from parent and is a loan from the parent.

Q What I'm asking is what makes up the amount of money. Is it an allocation of expenses, or is it a loan that was made by Elk to AmeriTrans?

A It's a cumulative number of the allocation of expenses for AmeriTrans -- of the allocation of expenses.

Q If we go to -- we have the next exhibit. I believe Exhibit 6 -- open up Exhibit 7.

Have you had a chance to open up Exhibit 7?

A Yes, I'm opening -- I have it

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open.

Looks like a 38-page PDF.

Q Okay. Is Exhibit 7 the audited financial statement that Elk's accountants would have submitted with the paper copy to the SBA with the 468 for the annual period ending, in this case, June 30, 2010 -- June 30, 2011?

A I believe so. I haven't fully reviewed it, but I believe so.

Q Is there any -- is there any other document that would be a part of the annual -- the submission of the annual report by Elk to the SBA?

A Is there any other -- I assume there's probably a portfolio valuation report that goes with it as well.

Q That's in the 468 schedule of financings, isn't it?

A I haven't looked through the whole document. It's not here.

Q Sure.

In your testimony looking at

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the annual 468, you referred to an -- the audited financial statement would come from the Elk's accountants.

A That is included in this PDF, yeah.

Q That's Exhibit 7. If you go back -- you have to look at Exhibit 6 and 7 together. If you go back to Exhibit 6, if you flip through the PDF until you come to page -- on the lower right-hand corner it's page 12C.

A 6 and 7 are the essentially the same document for the same time period, is that what these two exhibits --

Q Not the same document, it's for the same time period. So the period ending June 24, 2011.

A Okay. I have them both. I can't have them both open simultaneously.

Q Right.

A Which one would you like me to work with?

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Q If you look at page -- if you go to approximately page 16 of Exhibit 6.

A So 6, 16, there is a sideways page.

Q Yep. It's a schedule of loans and investments. Is that --

A Yeah, no, I think there would have been a memo. I think they would have gotten the loan report as well, the valuation summary somewhere as well.

Q Okay. Is that something you would have reviewed and sent, or would someone else have reviewed and sent the loan report?

A Silvia would have.

Q Okay. In addition to the loan report, the 468, and the annual audited financial statements, would anything else be submitted by Elk to the SBA for the annual report?

A I don't recall. There would be an audit. Yes, there would be an

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audit that SBA would have. There's a separate agency that would come in for the same period and would audit Elk simultaneously I guess -- I believe in a parallel time frame, roughly. And that would be submitted to SBA.

Q Go ahead. I'm sorry.

A That was -- I believe that was part of the annual 468 process where -- what SBA would take to review at the end of the year.

So this and the examination report, and any -- I don't know if there is any clarification documents or any e-mails between Fonda and Sylvia of -- I don't want to give you an absolute answer. I would like to say there might have been other SBA forms that were also filed dealing with individual portfolio companies at the end of the year certifying -- there were other items at the end of the year that needed to be done as well. Like portfolio concentration reports maybe.

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So I don't know if those schedules are included here.

Q Okay. Anything else come to mind?

A I'm reading it sideways, so it's -- but I think that's the general idea. There was some -- there was some additional information outside of this that was -- but I can't speak specifically what it is.

Q Would the information outside of the 468 and annual audited report vary, depending -- from year to year?

A It -- no, it should be similar.

Q You made a reference to a audit report by the SBA and an examination report. Isn't the SBA's review an examination report not an audit report?

A We would have an annual examination by SBA where an SBA examiner would come in and audit or examine, so it's not using -- let's say

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examine to use, I guess, a technical term -- our compliance with rules and regulations and look for -- I guess examine the books and records, go through the GL, go through the loan, the portfolio, do a -- do a -- it's similar to an audit in that it was run like an audit, but it was for SBA regulatory period.

They would prepare a financial statement from the ground up. And I think that was a check and a balance so that -- sorry.

Q Okay. But that was from the office of examination?

A Yes. I -- you asked at the end of year what was delivered as part of the annual audit of Elk. And that audit was required to closeout the year in order to stay in good standing.

Q It's, if you know, whether the SBA audits the books or whether they examine the books, if you know the difference. If you don't know, that's

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fine, too.

A I don't know the difference -- the distinction. I don't understand the distinction you're making.

Q Okay. In terms -- okay.

If we can go to the next 468, which is for the period ending December 31, 2011.

A Which exhibit?

Q That would be the next exhibit once it's loaded.

MS. BILODEAU: It's marked Exhibit 8.

THE WITNESS: Thank you.

A 25-page PDF dated -- it's a short form SBA Form 468 dated 12/31/11.

Q Okay.

A This is the short form. Now I understand.

Q Now, this -- if we go to --

MR. WEINBERG: I'm sorry.

Let's see if we have the right -- we might have to substitute

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exhibits. Let me see. I'm sorry.

Bob, can we substitute for Exhibit 8 -- Kelsey, we'll need the one from Tab 13.

Bob, can you do that?

MS. BILODEAU: Steve, can we go off the record.

MR. WEINBERG: Yes.

VIDEOGRAPHER: This will end Media Unit 3. Going off the record at 1:47, October 28, 2021.

(Whereupon, a brief recess was taken.)

VIDEOGRAPHER: We are back on the record. The time is 2:00 p.m. October 28, 2021. This will begin Media Unit 4.

(Form 468 as of 12/31/11, was marked Exhibit 8, for identification, as of this date.)

MR. WEINBERG: Bob, can you substitute for the new Exhibit 8.

Q Mr. Feinsod, can you open up Exhibit 8?

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A Marked exhibit 8 replacement PDF. Exhibit 8 Feinsod. Looks like a 28-page PDF I have open to the first page.

Q Can you tell us -- after you've looked at it briefly, could you tell us what Exhibit 8 is, please.

A Give me a minute.

It looks like a quarterly Form 468 for the period ending 12/30 -- for the six months ending 12/31/2011.

Q Thank you.

And if you go to the last page of the PDF, page 28, management and secretary certification signed.

A They're both signed as of February 15th, 2012.

Q That the 468 for the six months ended --

(Clarification by the reporter.)

Q -- ended 12/31/2011 is true and correct and that the secretary certification, which is the management

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certification, and the secretary certification that was approved by the board; is that right?

A That is correct.

Q And if we go to page 2C, which is the second page of the PDF.

A Okay.

Q Line 24, how much is due from parent that AmeriTrans owes Elk as of December 31, 2011?

A 5,124,413.

Q \$5,124,413; is that right?

A Yes.

Q Okay. Now, as of that date, does the amount that AmeriTrans owes Elk consist of an allocation of expenses, or are there loans from Elk to AmeriTrans in the \$5 million?

A An allocation -- I believe it's an allocation of expenses.

Q And if we look at page 4C, which is the -- should be the fourth page of the PDF, I believe.

A Okay.

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Q Line 31, net income or loss, is Elk operating at a profit or a loss for the six-month period ending December 31, 2011?

A It looks like a loss.

Q And the loss is \$478,697; is that right?

A Yes.

Q If we go to the next exhibit.

(Form 468 as of 3/31/12, was marked Exhibit 9, for identification, as of this date.)

A What exhibit is that?

Q You have to wait for it to load.

A Okay.

Q That's March -- the -- I guess it's 10 of 14, March 31st, 2012, 468.

(Clarification by the reporter.)

MS. BILODEAU: That's going to be Exhibit 9.

You can refresh.

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Q Are you able to open Exhibit 9?

A That's already been open.

Q Okay. Can you tell us what Exhibit 9 is.

A It looks like a 468 for the period ending 3/31/12.

Q Okay. Is that an -- and that's on the short form; is that right?

(Unreportable cross-talk.)

(Clarification by the reporter.)

A Let me go back to the first page to check.

And yes, on the first page this says it's a short form.

Q And if we go to the last page of the PDF, do you have the management certification signed by Richard Feinstein; is that correct?

A Yes.

Q Okay. And now, on the -- we have -- if we go to page 2 of the PDF,

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we go to line 24, we have the due from parent.

How much is the due from parent that's owed from AmeriTrans to Elk as of the --

(Clarification by the reporter.)

Q -- March 31st, 2012?

A What page?

Q Second page of the PDF.

A Okay. According to this, which I can't -- I'd like to point out I can't tell if it's draft or not -- line 24, is that what you asked about?

Q Yes.

A Okay. According to this, what may you been a draft, says: 10,100,527.

Q \$10,100,527; is that right?

A Yes.

Q Okay. Now, does that amount include an allocation of expenses and a loan from Elk to AmeriTrans?

A I don't believe so.

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Q By the period ending March 31, 2012, do you know if Elk made a loan to AmeriTrans?

MR. HASHEM: Objection.

Calls for a legal conclusion.

A I don't recall the dates when certain things happened.

Q Okay. Was there a certain point in time where Elk -- where the board authorized a loan or a note with AmeriTrans?

A I don't recall specifically.

Q Okay.

Looking at the 468 for March of 2012, do you recall reviewing the 468 for that period quarter ending March 31st, 2012?

A Not specifically, no.

Q If -- if we go to the audit committee minutes, the audit committee minutes for May 8th of 2012 -- let's see, before we load that --

Okay. If you could load as the next exhibit, the audit committee

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minutes, which is Tab 22 for May 8, 2012.

(Board meeting minutes dated May 8, 2012, was marked Exhibit 10, for identification, as of this date.)

MS. BILODEAU: That's been marked Exhibit 10.

Q Would you open up Exhibit 10.

A Yes.

Q Can you tell us what Exhibit 10 is.

A It looks like draft minutes from the audit committee.

Q Okay. Now, were you listed as being present at the audit committee meeting of May 8, 2012?

A The draft says I am.

Q Okay. Do you recall the meeting?

A No, I do not.

Q Would you go to page 2 and refresh -- and see if the entries to Form 468 refreshes your recollection.

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A Okay. I've read the page.

Q Is the reference in the minutes discussing that Elk being late with the filing of the Form 468s, at least for the period ending -- quarter ending March 31, 2012?

A Yes, it appears to be.

Q Okay. And does that refresh your recollection as to that being the case with the 468s?

A From time to time, we've been late. Yes, that does refresh my memory.

Q Okay. And was there a direction here by the audit committee or that the audit committee agreed to have the Form 468 for the period ended March 31st, 2012, filed concurrently with or immediately filing the -- following the filing of the company's form 10-Q for that period?

MR. SEIDEL: Objection to form.

A Yes, yes, that's what --

FEINSOD

that's what the aspiration was.

Q Okay. Does that refresh your recollection as to what occurred here with respect to the filing of the Form 468 for Elk for the quarter of March 31st, 2012?

A Give me a minute. I'm just trying to understand the time frame. It was March 31, that would make it to April 31st, May 15th, and it was May 8th.

I'm trying to -- I have read the paragraph. So I don't believe it's late yet, so I'm trying to understand --

Q I'm asking --

A -- the paragraph.

Q -- does it refresh your recollection --

A It refreshes my memory.

Q -- that that was the process that Elk followed that after -- that the committee agreed that after the filing -- after the approval and filing

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of the 10-Q, the 468 would be filed concurrently or after the filing of the 10-Q?

MR. SEIDEL: Objection to form.

(Clarification by the reporter.)

A It refreshes my memory that that was the aspiration of the audit committee, that that -- that those two documents be filed that that time which -- sorry.

It said: 30 -- okay. I'm sorry.

Q Okay. We can go to a 468 for the period ending June 30, 2012.

(Form 468 as of 6/30/12, was marked Exhibit 11, for identification, as of this date.)

MS. BILODEAU: That's been marked Exhibit 11.

A Okay. I have it open.

Q Okay. Can you -- after you --

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Have you had a chance to look at it and see what the Form 468 is for --

A I've scanned -- yes, I've scanned through it. It appears to be a draft copy of a Form 468.

Q Okay. Now, do you -- if you go to the last page, is the last -- are there any signatures or certifications from management or the secretary certification?

A No, that -- that's what made me believe it's a draft.

Q Okay. Now, do you -- do you know if the end, in terms of a being a draft form is -- can you tell from this if it's a draft form or if there was an audit for the period ending June 30, 2012?

MS. CLARKE: Objection to the form.

A Going back to the first page. Give me a few minutes -- give me a minute to review.

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The annual Form 468, it doesn't indicate on it that it is audited, no.

Q Do you know -- and at this time, June 30, 2012, do you know whether Elk, as a small business investment company -- withdrawn.

Do you know what the office of operations is for the SBA?

A The office of operations?

Q Yes.

A No, I'm not even -- never heard of it.

Q Okay. Elk, was an operating SBIC, small business investment company; is that -- is that correct?

MR. HASHEM: Objection.

Foundation. What do you mean by "operating"?

Q Was Elk -- during the period of time while you were president and CEO, was Elk operating pursuant to a small business investment company license?

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A For part of the time, yes, until -- until October of 2012, I believe, we were an SBIC.

Q Do you know what the office of liquidation is for the SBA?

A I'm familiar with it.

Q Do you know when Elk was transferred to the office of liquidation?

A I don't remember the date, no.

Q In relation for the period ending June 30, 2012, had Elk been transferred to liquidation -- the office of liquidation for the SBA?

A I don't believe so.

Q Do you remember -- withdrawn.

Do you know if the annual 468 for the period ending June 30, 2012, was filed with the SBA?

A I don't recall during the litigation this period was covering when we were actively suing the SBA and we had already been in initial contact

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with -- June 30th? No, I don't know. I don't know.

Q Okay. Would Elk -- has Elk filed a Form 468 with the SBA without approval by the audit committee?

A I -- I wouldn't -- I do not know. Let me back up. Not that I know of.

Q On behalf of Elk, who files a -- who does the physical electronic and hard copy mailing of the 468 to the SBA?

A It was historically Silvia Mullens and Margaret Chance's responsibility.

Q For the period ending June 30, 2012, the 468 would have been mailed some months after June 30; is that right?

A Yeah, it would have been -- I believe it was due -- is it due 90 days after?

Q Whatever the period of time is that the annual is due is -- is when

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it's due whether it's 45 --

A I don't know the dates that it's due. I apologize.

Q No worries. But it would be -- it would be 45, 60, 90 days, it would be a period of time after June 30, 2012, that the annual June 30, 2012, 468 would be due to the SBA, right?

A Yes.

Q Okay.

A At that time, we had stopped talking to our analyst at that point. I would -- around this point, we weren't -- the office of operations was no longer speaking to us.

Q Okay. Who was Elk's analyst at the office of operations?

A Fonda, it's Fonda Stevens Kelly.

Q And did -- was there a counterpart in the office of liquidation that Elk communicated with?

A We communicated with several

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people in the office of liquidation. I don't recall their names.

Q I'm sorry. You do or don't recall their names?

A I don't recall their names. I don't remember.

Q At this time in 2012 was it Silvia Mullens or Margaret Chance who would may have filed an L -- a 468 with the SBA?

A A 468 covering the period ending 6/30/2012 likely would have been filed by Silvia Mullens.

Q Okay. Is there anyone else on behalf of Elk that would have electronically or physically mailed a hard copy of a 468 for period ending June 30, 2012?

A I don't believe so.

Q If the audit committee reviewed a 468, would its review be reflected in audit committee minutes?

MR. SEIDEL: Objection to form.

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A I believe it normally would have.

Q If the board -- if the board of directors reviewed a 468 for Elk, would it have been reflected in the board meeting minutes?

MR. SEIDEL: Objection to form.

A I believe it would have.

Q Is the converse true? If a 468 is not submitted to the board of directors for review, would there be any reference to not reviewing a board meeting minutes -- not reviewing a 468 in the board minutes?

MS. CLARKE: Objection to form. Calls for speculation. Lacks foundation.

MR. SEIDEL: Vague. Confusing as well.

(Unreportable cross-talk.)

Q We'll withdraw the question. Did Elk have an alternative procedure for review and approval of a

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468 if it was not done at an audit committee meeting?

A It's a confusing question, and not that I recall.

Q Did Elk have an alternative procedure for review and approval of the 468 if a 468 was not reviewed at a board meeting?

A I don't recall anything that would be an alternate procedure at Elk.

Q To review or approve a 468?

A I don't -- an alternative procedure in any context, its misleading, it's not -- it doesn't make sense to me.

Q Okay. Other than taking a vote at a board meeting, is there any other way the board can approve a 468?

MR. SEIDEL: Objection. Calls for speculation.

A Not that I know. Sorry.

Q Is there a procedure that is known as getting a -- what -- a unanimous written consent to the filing

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of the 468?

MR. SEIDEL: Objection to form.

A I apologize for my confusion.

Yes. A UWC might meet --

(Clarification by the reporter.)

A A UWC might meet the requirements of a board meeting to review the 468, on reflection. Thank you.

Q What was Elk's practice or procedure with respect to a UWC?

MR. SEIDEL: Objection to form. No foundation.

A I can answer?

Q You can answer. Sure.

A Elk's procedure with respect to UWCs followed our understanding of law where if a -- the board wasn't physically present together, there could be authorized by unanimous written consent. Board action that would otherwise require a full board

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meeting could be approved by an anonymous written consent.

That was my -- that was our understanding, non-legalese summary of it.

Q Do you know if that was -- if the board did that with respect to filing or approving the June 30, 2012, 468?

A I don't recall. It's a long time ago.

Q Did the audit committee have a procedure to approve a 468 by unanimous written consent?

MR. SEIDEL: Objection to form.

A I would believe that the audit committee -- it was my impression that the audit committee utilized Robert's Rules of Order to dictate its actions and the law. And I think specifies when a UWC is necessary, and we tried -- we followed that, when appropriate.

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Q Do you have an understanding if Robert's Rules of Order and the law allowed the audit committee to utilize a UWC to review and approve a 468?

MR. SEIDEL: Objection to form.

A I believe that the procedures adopted and the laws of various states permitted a UWC to be used in lieu of for board action, to ratify board action, and that was the goal --

Q Do you know if the --

A -- of the UWC.

Q Do you know if the audit committee utilized a UWC procedure to ratify the 468 --

A I don't recall. I don't recall.

Q Just to complete the question:

-- for the period ending June 30, 2012? Is your answer --

A I apologize for interrupting. And no, I don't recall.

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Q Other than a UWC, is there any other alternative procedure for approval of a 468?

A Not that comes to mind, but if you refresh my memory, maybe.

Q If we can now go to the -- let's go to the 10-Q for the period ending March 31, 2013.

(EDGAR Submission Header Summary/Form 10Q, was marked Exhibit 12, for identification, as of this date.)

MS. BILODEAU: That has been marked Exhibit 12.

A I have it open and flipped through the pages.

Q Just flipping through the pages, could you tell us what Exhibit 12 is.

A It appears to be a filing -- an EDGAR filing copy of the 10-Q for the period the company's actual submission to EDGAR --

Q Okay.

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A -- the receipt.

Q And who on behalf of the company would sign the 10-Q for filing?

A I believe I would, and the CFO would at this point.

Q Okay.

A If you bear with me, I can confirm that.

Q Sure. If you check the last --

A I know where it is. Thank you.

Q Sure. Last 5 pages of the exhibit.

A This a file copy indicating that I signed it before it was filed, and -- as CEO and president, and Richard Feinstein signed it as chief financial officer.

Q And by your signature, you're attesting that it's a true and correct --

A I don't think so. I have a couple of -- there's a lot of things

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that -- it's true and correct is the reference from the 468. There's a lot of -- there's attestations here different from that.

Q What are your attestations on behalf of 10-Q?

A They're specified on page -- what is this -- 46, there's five of them with a couple of sub parts. If you want me to read them, I'm happy to.

Q That's okay. They'll speak for themselves.

Mr. Feinstein, what is his certification attesting to? Again, the attestations that --

A Mr. Feinstein --

(Clarification by the reporter.)

Q Are the attestations that Mr. Feinstein is attesting to on page 47 of the PDF?

A I'm just looking through them. They're different than mine, so bear with me.

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They refer to my disclosures, and they refer to certain disclosures that apply to the CFO, to Mr. Feinstein's declaration.

Q Okay. And these disclosures refer to the accuracy of the information that's in the document; is that fair to say?

A Amongst other things, yeah.

Q Now, if we look at the -- the numerical page is 14.

A Okay.

Okay. I'm at page 14.

Q At this point, the investments that are here, these investments are still on a consolidated basis; is that correct?

A Yes, they should be reported on a consolidated basis, yes.

Q Okay. So the value of both Elk and AmeriTrans investments as of March 31, 2013, is listed as \$9,924,740; is that right?

A Under fair value, yes.

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Q Okay. If we go to page 27 numerical page 27 on the filing.

A Okay.

Q Are you there?

A Yes.

Q Under Liabilities there is entry: Liabilities and Net Liabilities Due to Elk Associates Funding.

Is that a liability from AmeriTrans to Elk?

A Which is -- which is -- what line are you referring to? Could you tell me what it's -- what it --

Q Do you see where it says Liabilities and Net Liabilities?

A Do -- I see two sections, yes, Elk is not on either one.

Q The section Liabilities and Net Liabilities. Do you see the third line?

A Oh, I see it. I'm sorry. I see Liabilities and Net Liabilities now.

Q Due to Elk funding Corp.?

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A Yes, I see it.

Q It's \$14,271,038; is that correct?

A That's what it says.

Q There is a reference to a note C.

A In one of the columns, yes.

Q Okay. And note C on page 31, if you go to page 31.

A Okay.

Q It's: To record amounts owed by AmeriTrans Capital Corporation to Elk.

Do you see that note?

A Okay.

Q Now, sorry, but if you go back to page 28.

A Okay.

Q There is a heading: Expenses.

A Expenses, okay.

Q And under Expenses, there are salaries and employee benefits; occupancy; legal fees; accounting and

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compliance fees; director's fees and expenses; other administrative expenses; loss and impairment on assets acquired in satisfaction of loans.

Do you see all those entries?

A Yes.

Q Okay. And the entries total \$1,826,111; is that right?

A The pro forma adjustments in column -- for those items total that, correct.

Q And are those expenses that Elk paid for that AmeriTrans owes Elk for its share of those expenses?

A I don't recall how this number was constructed.

Q If we go back to page 31, look at note D.

A Okay.

Q Does -- does that refresh your recollection as to what those expenses represent that are listed on page 28 in the amount of \$1,826,111?

A It helps to understand the

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pro forma or the letter.

Q Okay. What is -- what is your understanding of the pro forma adjustments?

A After the de-consolidation of Elk we would have -- we had -- we -- excuse me.

Once Elk was de-consolidated, it looks like Elk had been 100 percent or 95 percent -- 99 percent of the income of the company, and then after de-consolidation, the company had small income and expenses that after de-consolidated were \$1.7 million. So the \$1.8 million was associated with Elk -- allocated to Elk, maybe.

Q Are they the expenses that Elk paid but AmeriTrans owes Elk that share of the money, the 1.8 million?

MR. SEIDEL: Objection to form.

A I'd be speculating. I don't remember the -- the preparation around this.

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Q Okay. And if you go on page 31.

A Yes.

Q Do you understand what the footnote is in D?

(Clarification by the reporter.)

A This is, I guess, part of the accounting treatment caused by the de-consolidation of Elk that happened during the quarter due to the receivership, caused some backward-looking adjustments, and, I guess, you know, pro forma adjustments which I believe are estimates of a sort as well.

Q Okay.

MS. CLARKE: Mr. Feinsod, I'm just going to caution you not to speculate in your answers.

THE WITNESS: Thank you.

Q Is there anything that's incorrect about the statement: Adjustments relate to allocation

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expenses incurred by AmeriTrans Capital Corporation but paid for by and recorded on the books of Elk; and hence, would not be eliminated by the de-consolidation of Elk?

A I'm not sure. I'd be speculating.

Q Okay. In terms of what -- your certification, your certifications of the statements in 10-Q are correct?

A I believe they are.

Q In terms of the due from parent, so does this refresh your recollection that the due from parent from AmeriTrans to Elk increased to over \$14 million?

A It does.

Q In terms of the due from parent, were there any -- what internal controls, if any, did Elk have with respect to the due from parent?

A We followed SBA accounting policies.

Q Anything else?

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A Not that I remember.

It was created by -- it was created by guidance from SBA.

Q What guidance are you referring to?

A The chart of accounts sets out this due from parent relationship, which is standard with drop-down SBICs. Standard item on the 468, so.

Q What is a drop-down SBIC?

A SBIC -- drop-down SBIC is an SBIC that's owned by another company.

Q And was there any guidance as to when the due from parent had to be paid or true up by the parent to Elk?

A I don't believe so. It was discussed with Fonda and Paul on a regular basis, on a quarterly basis at least, excuse me.

(Clarification by the reporter.)

A Fonda and Paul.

Q Okay. Well, what generally were the discussions with Fonda and

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Paul with respect to the due from parent?

A Just the existence of it. It was acknowledged, it was -- you know, at certain points when we met with them it was -- for a portfolio review meeting, it was discussed as part of the recapitalization of Elk.

It was -- it was -- it was, I guess, that we kept them up-to-date on everything that was going on, so, very intimately. Fonda was intimately involved with the portfolio, and Paul to a lesser extent.

Q When you refer to a recapitalization of Elk, what period of time are you referring to?

A After our portfolio review meeting, sometime in 2010, and at various instances after that.

Q Do you recall an instance after that where -- after --

And who on behalf of Elk would have the discussion with Fonda

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Stevens Kelly at a portfolio review meeting?

A At that portfolio meeting, it was definitely at least me and Silvia. I don't recall. We submitted a presentation as well. I believe I saw in the record at one point.

Q Presentation, we talked about the portfolio or portfolio financings, which are the loans and investments file; is that right?

A No, that's not correct.

Q What would be included in the portfolio review in the presentation?

A I don't recall exactly, but there's a TechNote somewhere that details it.

Q And how often would you have the -- would the portfolio review meeting be in person or over the phone?

A It was in person in Washington, DC.

Q And would this place -- take place annually or quarterly how often?

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What would be the regularity that the meeting would take place?

A Portfolio -- one was on invitation, but what the rest were --

(Clarification by the reporter.)

A -- and Fonda would visit, I believe, at least once a year and spend the day or half a day with us and Silvia, familiarizing ourself, getting up to date with what's going on.

She had a handful of SBICs in the New York area that she would oversee at the same period.

Q And in addition -- and what was --

A It was also --

Q Go ahead. Finish your answer, please.

A It was also discussed at length during our settlement conferences with the SBA in October of 2012.

Q Other than at the portfolio

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review meeting, did the period of time 2009 through 2011, was there any other reference or discussion about the due from parent with the SBA?

A Absolutely. Quarterly.

Q And when you say "quarterly," what are you referring to? Are you referring to the --

A We would file --

(Clarification by the reporter.)

Q What are you referring to quarterly?

A After we would file the Form 468, at some point Fonda would have a discussion about the items contained in the 468.

Her job was overseeing Elk, so she would ask questions about the loans, she would ask questions about the different lines of the 468. And that was an account that was consistently in flux.

Q Do you recall if there was a

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specific discussion about the due from parent between yourself and Fonda Stevens Kelly?

A Yes.

Q What was your discussion?

A About -- it was within the total review of Elk during a quarterly visit on each quarterly -- each time that she visited or spoke and went over a Form 468, it was discussed. The existence of it was discussed.

And then, I guess, maybe on a less regular basis, Paul Salgado, when we did speak to him. So like, for instance, probably in 2011 when we applied for debenture -- 2009, it was probably discussed.

Q Okay. Do you have a more specific recollection as to what the discussion was about the due from parent in -- at any time in 2011?

MR. SEIDEL: Objection to the form of the question.

A Can you repeat the question.

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I got confused with Martin's objection.

Q Sure.

Do you have a specific -- more specific recollection as to what was discussed with Fonda Stevens Kelly between Elk and the SBA about the due from parent?

MR. SEIDEL: Same objection.

A The number was discussed and the amount was discussed, so I don't -- I can't be more clear than that. I apologize.

The amount grew, to your point as you referenced, and they were -- we discussed at each filing.

Q Can you recall anything -- were there any discussion about when the amount will be paid back with the SBA in 2011?

MR. SEIDEL: Objection to form.

(Clarification by the reporter.)

A Can you repeat the question

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one more time, Steven. Thank you.

Q Other than the amount, was there any discussion with the SBA in 2011 as to when the due from parent would be paid back from AmeriTrans to Elk?

MR. SEIDEL: Objection to form.

A I don't recall. You showed me an item before, I don't know if the repayment was made, but that was 2011 or 2010.

Q When you say "an item," are you referring to the general ledger work paper?

A The draft work paper -- the work papers that you showed me, yeah.

Q Do you recall what Fonda Stevens Kelly said about the due from parent in any meeting with you or Silvia in connection with the quarterly review?

A No, it wasn't -- it wasn't an item of large concern. It was normal

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course.

Q Are there any additional -- are there any other internal controls that the company followed with respect to incurring the expenses, advances with respect to the due from parent?

A I don't recall, but there probably -- they were documented. We had documented controls, so they're probably in the record.

Q Okay. Do you know -- do you know what review, if any, the accountants for Elk or AmeriTrans would do with respect to the due from parent?

A I believe -- I believe they would test it -- test the -- all the assumptions made under it. And I would assume they audit it for validity, policy practices.

Q I'm not asking what you assume or believe; I'm asking you what you know or understand.

A It was my understanding that they engaged in their regular audit

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procedures and confirmed that our -- the entry recorded as due to parent was recorded as it was supposed to be presented.

Q Their audit procedure would confirm that the number was accurate; is that right?

A I believe it would.

MR. HASHEM: Objection.

Mischaracterizes testimony. He didn't say accurate. He said it's presented as it's supposed to be presented.

Q The audit procedure would view or check for the amount of -- that would be due from the parent; is that fair to say?

MR. SEIDEL: Objection to form.

A Which audit procedure? Let's be specific.

Q Is it different? Is the audit procedure different for a 468 compared with a 10-K?

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MR. SEIDEL: Objection to form.

I think the confusion is there are often multiple audit procedures applicable to any one patent. You're acting as if there's a single audit procedure, describing it and saying: Is that it?

MR. WEINBERG: I'm asking what the witness knows.

MR. SEIDEL: No, you're not asking a question about what witness knows.

Q Do you know what the audit procedure is with respect -- or procedures are that would review the due from parent?

A No, I don't remember after all these years.

(Whereupon, a discussion was held off the record.)

VIDEOGRAPHER: This will end Media Unit 4. Going off the

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record at 2:56, October 28, 2021.

(Whereupon, a brief recess was taken.)

VIDEOGRAPHER: We are back on the record. The time is 3:13, October 28, 2021. This will begin Media Unit 5.

Q Mr. Feinsod, if you would go to Exhibit 13, please.

(EDGAR Submission Header Summary/Form 8K, was marked Exhibit 13, for identification, as of this date.)

A Okay. I have it.

Q Did you look at -- look at Exhibit 13. After you've had a chance, please review it, and tell us what it is.

A It's a Form 8-K. It's dated -- it is a Form 8-K dated April 25th -- or probably dated April 27 or somewhere thereafter, reporting an event that happened --

(Clarification by the

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reporter.)

A It was -- it's an 8-K reporting an event from April 25th. That event appears to be the filing of the receivership order in appointing SBA as receiver -- as permanent liquidating receiver for Elk.

Q Did you sign the 8-K filing on behalf of AmeriTrans?

A This is -- indicates that I signed an original somewhere.

Q Okay.

A This is a filing copy.

Q That you signed as chief executive officer and president on behalf of AmeriTrans Capital Corporation; is that right?

A I signed as the -- yes, correct, in those two titles.

Q I believe if you look at page 6 of the PDF, it's page -- there is a number 2 on the bottom of the page. It is titled: AmeriTrans Capital Corporation Pro Forma

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Consolidated Balance Sheet.

A Yes.

Q Does the pro forma balance sheet restate the assets of AmeriTrans and liabilities of AmeriTrans on a de-consolidated basis?

A On a pro forma basis giving effect to the Elk receivership that occurred in the next financial period. It does not reflect the actual condition of the company on December -- it does not reflect the actual financial condition of the company of AmeriTrans on December 31, 2012.

Q On a pro forma basis, what was the value of AmeriTrans' assets as of December 31, 2012?

A On a pro forma reported basis, according to this, it says 5.5 -- 5,486,327.

Q Sorry. That's the total investments at fair value, but the company has some cash, right?

A Oh, I apologize. I was

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looking at the investment value. Yes, going down to total assets, the line -- I was looking at the wrong line in my last answer, is 5,787,376.

Q Is that \$5,787,376?

A Yes, it is.

Q And that represents the value of the total assets of AmeriTrans Capital Corporation as of December 31, 2012, on a pro forma basis?

A Reports the amount of pro forma -- yes, it represents that.

Q When we talked about total investments at fair value, that was the line you started to read at, \$5,486,327?

A Um-hum.

Q Is that the right value on that -- on that line?

A For the purposes of the pro forma, I believe it is.

Q Okay.

A This was not -- on December 31, this was not our balance

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sheet. I just want to clarify that this was not the balance sheet of the company, of any company.

Q It's the pro forma -- is it -- the total investments at fair value is the balance of the investments that are owned by AmeriTrans and the fair value of those investments; is that right?

A I apologize. One more -- please repeat the question.

Q The total investments at fair value represent the assets owned by AmeriTrans as opposed to Elk; is that right?

A In which column? In the as reported, yes, the 16,521,165 is what we reported as of December 31st, 2012.

Q That's what was reported on a de-consolidated basis the assets are actually owned by AmeriTrans at fair value are 5,486,327; is that right?

A Not as of December 31st, 2012, no. That's incorrect.

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Q Any reported now in terms of what the fair value are of the investments owned by AmeriTrans is approximately 5,486,327, isn't it?

A On a pro forma basis after giving effect to the April filing of the receivership order, that's what this represents.

Q Okay. And on a pro forma basis, after the filing of the receivership, the total assets of AmeriTrans, excluding Elk, as of June 30, 2012, was \$4,989,323; is that right?

A I don't have that number in front of me. I don't know what you are reading from.

Q If you go to page 4.

A Page 4 of the 8-K?

Q Yes.

A The question is what?

Q Page 8 of the PDF, page 4 of the 8-K.

Are the total --

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(Unreportable cross-talk.)

MR. WEINBERG: May I ask the question?

MS. CLARKE: I'm sorry. What page are we on?

THE WITNESS: No, I'm trying to clarify the page.

Q Sure. It's on page number 4 at the bottom, it is page 8 of the PDF.

A Got it.

MS. CLARKE: Page 9?

A Page 9 of the PDF.

MR. WEINBERG: I apologize, Elizabeth.

MS. CLARKE: Sorry, I was just trying to make sure we're all on the same page.

MR. WEINBERG: I have a hard time reading the bottom of the page.

Okay. Page 9 of the PDF, page 4 on the document titled: AmeriTrans Capital Pro Forma Consolidated Balance Sheet

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June 30, 2012, Unaudited.

Q Okay. Is the total assets of AmeriTrans on a pro forma basis taking into account the receivership and excluding the Elk assets, \$4,989,323 as of June 30, 2012?

A That's what this 8-K says.

Q Okay. And the fair value of AmeriTrans investments, investments that are owned by -- were owned by AmeriTrans on a pro forma basis is restated as of June 30, 2012, as \$4,739,428; is that right?

A I'm not sure from this.

Q Okay. You see line 3 -- I'm sorry, after assets?

A They're not numbered.

Q Total investments at fair value pro forma?

A Yes, I see that.

Q Okay.

A But you're forgetting June 30 -- I'm sorry.

Okay. I got it. I

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apologize. I realize now that we're jumping between periods more.

Q I'm sorry. What?

A I realize now that we're jumping between -- that the financial statements are jumping between different periods now that I'm familiarizing myself with the document.

Q Okay. Is it fair to -- on the restating the fair value of AmeriTrans investments as of December 31, 2012, on a pro forma basis, it was \$5,486,327. As of June 30, 2012, it was \$4,739,428.

A On a pro forma restated basis, yes.

Q When we refer to assets owned by AmeriTrans, are we referring to what you called earlier as the legacy assets?

A I don't know at this point what's in the portfolio now. This is -- and I don't know which period you're referring to at this point.

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There's multiple periods here.

Q All right. For the period ending December 30, 2011, would there be a change, a significant change in the value of the assets owned by AmeriTrans at fair value from --

A I don't have a --

(Clarification by the reporter.)

A Sorry. It was my fault. I apologize.

MR. WEINBERG: Do you have: From what's represented here, Judy?

(Whereupon, a discussion was held off the record.)

Q As of December 30, 2011, were the investments owned by AmeriTrans in approximately the same value range of 5 1/2 million to \$4 1/2 million?

A I do not recall and this exhibit doesn't give me a way to figure that out.

Q Do you have any reason to

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believe that the AmeriTrans investments as of December 30, 2011, were worth more than \$6 million?

A I don't recall. I don't have anything in front of me to make that -- make that assumption.

Q \$7 million? Is there a reasonable cap at which you would be comfortable saying: Yeah, the AmeriTrans investments or legacy assets were not worth more than 5 million, 6 million, 7 million?

What would that cap be?

A As of what date?

Q December 30, 2011.

A I would have to look at the financial statements to make that -- everything in front of me is dated 2012.

Q Okay. You would have to look at the financial statements for AmeriTrans and you would have to look at the financial statements for Elk in order to separate out the assets that

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are owned solely by AmeriTrans; is that correct?

MR. SEIDEL: Objection to form.

A I would have to look at the financial statements for the periods that you reference in order to make any assumptions or any -- any -- any representations about either company's asset base.

Q If we go back to Exhibit 5, please.

A Got it.

Q We can go to page 2 of Exhibit 5.

Exhibit 5 is titled: Elk Associates Funding Corp. Intercompany Balance of AmeriTrans Capital Corporation Operating Expenses.

Does this refresh your recollection that there was a point in time when Elk entered into a loan with AmeriTrans?

A It refers to a note, a senior

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secured note.

(Unreportable cross-talk.)

Q Go ahead. I'm sorry. Please finish your answer.

A It refreshes my memory as to a senior secured note, yes.

Q And in terms of the allocation of expenses that are entered previously, what were the -- were there any payment terms from AmeriTrans to Elk?

MR. SEIDEL: Objection to form.

A I don't recall.

Q Did AmeriTrans owe Elk any interest for payment of AmeriTrans's share of expenses?

MR. SEIDEL: Objection --

A I don't believe so.

Sorry.

I don't believe so.

Q And was there any time for repayment by AmeriTrans to Elk for AmeriTrans's share of the expenses paid

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by Elk?

MS. CLARKE: Objection to the form.

A SBA permitted us to keep it quarter to quarter and pay it down from time to time.

Q Are there any payments on page 2?

A There are numbers on page 2.

Q Are there any payments by AmeriTrans to Elk on page 2?

A I don't know what -- I don't know what payments would be. What do you mean by payments?

Q Payments by -- is there any entry on the ledger indicating a payment by AmeriTrans to Elk on page 2?

A No, on that page there is not.

Q On page 3, are there any entries of payments from AmeriTrans to Elk?

A No.

Q Looking at page 2, do you

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remember what the -- was the senior secured note for \$4 1/2 million?

A I believe it was.

Q And was there interest that was owed by AmeriTrans to Elk on the note?

A I don't recall the terms of the note.

Q Do you recall -- okay.

Do you recall when AmeriTrans had paid back Elk under the terms of the note?

A I don't recall, but I believe it was specified in the note.

Q Now, the last payment on the note was March 23rd, 2012; is that right?

I'm sorry. The last advance on the note was March 23rd, 2012; is that right?

A I don't know from the last -- from the documents you've given me, that's what it looks like.

Q Okay. There's an entry here

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for a transfer from Elk Associates Funding Corporation to AmeriTrans Capital Corporation.

A On which page?

Q Same page, page 2.

175,000 business development expense. Do you know what that is for?

A Whatever business development expense falls into that category under, I guess, the general ledger system -- or the chart of accounts, excuse me.

Q Under what authority does Elk have to advance or make a payment to AmeriTrans as a business development expense?

MS. CLARKE: Objection.

Calls for a legal conclusion.

A I believe we were operating under both the regulations that provided for the intercompany balance, specifically, the advancement of expenses, to be paid by a parent under SBA regs.

Q Does that mean -- is your

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understanding of the reg that you could pay the parent an obligation of a parent's investment?

A I don't understand the question.

Q Okay. Does that mean you can pay life settlement premiums which were an investment owned by the parent?

MS. CLARKE: Objection.

Calls for a legal conclusion.

A I don't know -- business development expenses being -- I'm not understanding the question directly.

Q Okay. I'm asking what's a business development expense? Is that --

A Whatever our controls and policies and procedures and our chart of accounts characterized as a business development expense, in the other accounting guidance.

Q Does that include paying investment -- buying investments for AmeriTrans?

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A Buying investments for AmeriTrans? I don't know.

Q Does that include --

A I don't know what -- I don't -- I can't speak to what the definition means without seeing the regulation.

Q Okay. The senior secured note that's referenced on page 2, was that approved by the board?

A I believe it was.

Q In order to make a transfer, whose signatures are required to make a transfer between Elk and AmeriTrans?

A I don't recall whose.

Q Would it have been yours and Richard Feinstein's?

A I don't recall who had signatory authority on the bank accounts specifically.

Q Or a fund transfer request?

A I don't recall. In the record, there's, I'm sure, documentation that can refresh my

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memory.

Q Would the audit committee have reviewed the business development expenses?

A I believe they would have.

Q How would they -- how would the audit committee review the business development expenses?

A Because I believe this worksheet would have been shared with the audit committee, or the final version of the worksheet representing what this purports to represent.

Q Would this worksheet be part of the audit committee's review of journal entries that exceed 5 percent of quarterly revenue?

MR. SEIDEL: Objection to form. No foundation.

A I believe this would fit that category.

Q Did you have an understanding as to what the -- what the significance is of the category of journal entries

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of 5 percent that exceed 5 percent of quarterly revenue?

MS. CLARKE: Objection.

Vague.

A Could you repeat the question so I can answer it clearly.

Q Sure.

Do you have an understanding as to the significance of why the audit committee would review journal entries that are in excess of 5 percent of quarterly revenue?

A Yes.

MR. SEIDEL: Wait, hold on.

Objection to form. Vague.

Incomplete hypothetical. I don't see the -- if you're asking a generalized question about 5 percent of review, Steven, that's one thing. If you're trying misleadingly to suggest a specific item was reviewed, then no foundation.

MR. WEINBERG: I didn't say a

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specific item. We're talking generally.

Q Generally. You can answer the question.

A So generally, I believe that this report would have -- would have met the 5 percent requirement to be reviewed for journal entries.

And I guess, what was the -- the larger question was?

Q Do you have an understanding as to why the audit committee would review journal entries that are in excess of 5 percent of general revenue?

A Yes, because in 2008, I asked them to put that policy in place, personally.

Q Okay. Why did you ask for that policy to be in place?

A Because Gary Granoff had a -- when he was CFO in 2008, we were forced to restate earnings by a material amount due to an incorrect journal entry.

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And given we had -- there were a few people checking when -- Gary's work when he was CFO, we instituted a policy to make sure that the financial statements were accurate and that all journal entries above -- above 5 percent of revenue, I guess as you described, there was a specific written policy.

And I don't want to quote it, but there was a policy that was put in place in order to make sure the general entries were not made without the audit committee's and the board's knowledge -- or, I'm sorry, the audit committee's review. Excuse me.

Q Okay. And generally, what would the audit committee review with respect to journal entries that are excess of 5 percent of quarterly revenue?

A Everything. Every transaction that the company did during that quarter.

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Q When you say "everything," is that just verifying the amount of the transaction or --

A No, journal entries.

Q Okay.

A Journal entries or changes are made. It's an accounting term.

Q What does that include?

A It's an accounting term that means it's a journal entry making a change to the financial statements -- making an entry in the financial statements.

I don't know if it's considered an adjustment or not, but it is a -- it's an entry. It's something unusual.

And our control overshot the mark by putting a 5 percent limit in, which if you look at 5 percent of revenues, that would equal -- I mean, you could do the math, I don't have it in front of me, but on a million-dollar quarter maybe, it would throw in

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everything over -- under \$51,000 and above.

So it became a large amount of entries and probably was impractical after Gary was no longer -- and not needed after we adopted Sarbanes Oxley controls, but it stayed in place.

Q With respect to -- in terms of the journal entities --

(Clarification by the reporter.)

Q In terms of the journal entries, are they -- is the audit committee reviewing only the dollar amount, or are they also reviewing what the purpose was of the expense or entry?

A They were reporting --

MR. SEIDEL: Objection to form.

A They were reviewing the substance and the totality of each journal entry.

And I believe it was the

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chairman. I don't believe it was done by the committee.

Q Would the business development expenses that you see here on the -- on Exhibit 5 come before the board for review?

MR. SEIDEL: Objection to form. No foundation that there were -- that there was any presentation to the board; that there were board meetings at which an opportunity for a presentation could have been made during this time period; or that there was any suggestion -- there's no record that these were ever put to the board. There's no record that the board was meeting at that time at a point where they could have been put to the board, or for that matter, the audit committee or the audit committee chair.

Q For the period of time from June 2012 until December 2012, were

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there audit committee meetings?

A I believe there were.

Q Were there board meetings?

A Yes.

Q Was there procedure that Elk followed that would submit the business development expenses to the board for review?

MR. SEIDEL: Objection to form. Mischaracterizes the record. No foundation.

A I don't recall.

Q Other than your testimony as to the audit committee and/or the chair, do you know if there is any way that the board of directors would know about the business development expenses between Elk and AmeriTrans?

A Maybe through this schedule.

Q What schedule?

A The schedule in front of you, this work paper.

Q I'm not asking you to speculate. Do you know if the schedule

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that we're looking at, the general ledger work paper, would be presented to the board as a matter of --

A I do not know.

(Clarification by the reporter.)

Q -- Elk's practice?

A I did not recall.

Q We can go to the --

A I point out, again, that during -- on this page that we're looking at.

Q Yes? Which page are you looking at?

A The 2012 references.

Q Yes?

A Elk was not an SBIC for most of this period.

Q Wasn't Elk in the office of liquidation during that period?

A No, it was not.

Q During -- I'm sorry.

A It had entered into -- it had entered into a settlement agreement

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with the SBA most of the time covering these transfers.

Q Wasn't the settlement agreement with the SBA October 31st of 2012?

A Yes.

Q Okay.

A That's what this covers, this time period.

Q The time period covers business development expense from June 22, 2012, through December 19, 2012, correct?

A No, that's not correct.

Q We're looking at the entries on page -- just for the ones that are business development expenses, page 2 of the document, dated June 22, 2012, is a transfer from Elk to AmeriTrans business development expense, correct?

A Um-hum, correct.

Q That's before October 2012, isn't it?

A Yes. And then there's

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multiple transfers that happened after.

Q Well, there are multiple transfers that occurred before October 31st of 2012, and they're on page 1 of the exhibit, correct?

Is that right?

A On page 1 of the exhibit, there are multiple transfers that occurred after the settlement agreement was entered into.

Q I'm talking about the business development expense. There were --

A Yes, I am too.

Q -- of the agreement, my -- there are four transfers that occurred from August 10th, 2012, through August 24th, 2012, before the settlement agreement with the SBA, correct?

A No, there aren't. It says they go from 8/10/12, 9/19/12, 10/3/12, and 10/20/14. You said August --

Q Go ahead.

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A In the record, I believe you stated they went until August 2012.

Q If I did, I misstated. I said from August 10, 2012, through October 24, 2012, there are four transfers prior to October 31st of 2012, is that right, that are business development expenses?

A Yes.

Q Okay. After October 31, 2012, there were three transfers from Elk to AmeriTrans that are classified as business development expenses; is that right?

A Yes.

Q Those transfers were made from Elk to AmeriTrans and not made to the SBA under any settlement agreement; is that right?

A I believe there were payments made --

Q That wasn't the question.

A -- to the SBA --

So what was the question?

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Q The business development expense transfers that were made November 19, December 19 of 2012, and another business development was made March 28 of 2013 from Elk to AmeriTrans, correct?

A Correct. And my point is that at that point, Elk was not an SB- -- was no longer an SBIC, so I'm not sure if the business development expenses were accounted for the same way.

Q Okay. Well --

(Whereupon a discussion was held off the record.)

Q What is your basis -- what is your basis for the statement that Elk was no longer an SBIC based upon the settlement agreement?

A We turned in our license.

Q As of what date?

A Settlement agreement.

(Whereupon a discussion was held off the record.)

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Q As to when Elk turned in its license, that would be stated in the settlement agreement?

A It was simultaneous, I believe, with the settlement agreement. I believe, but it would be specified in the settlement.

Q Do you know if it would be specified or set forth in the receivership order as to when Elk turns in its license?

A It preceded the receivership order. The receivership order was stapled to the settlement agreement, so it was a single -- a single document with exhibits.

Q While Elk was an SBIC, was the SBA a creditor of Elk?

MS. CLARKE: Objection.

Calls for a legal conclusion.

A I believe it was.

Q Okay. After the date of the settlement, was the SBA a creditor of Elk?

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MS. CLARKE: Same objection.

A Yes, for a far reduced amount.

Q Was the -- after --

A The debt under the settlement agreement was -- our debt under the settlement was reduced by more than \$10 million. So after October 31st on a pro forma basis, one would imply that --

Q Was the --

(Clarification by the reporter.)

A -- that Elk had significantly less debt.

Q With respect to the reduction of the debt --

A I'm sorry. I didn't hear you.

Q Did the -- could the reduction of debt result in a cancellation of debt?

A In what -- in what context?

Q To Elk. Would that

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constitute investment income?

MS. CLARKE: Objection.

Calls for a legal conclusion.

A I don't -- I remember we investigated it and we were concerned about it and the implications of it, but I don't remember the actual -- what we discovered. I remember we investigated it.

Q Was there discussion about reducing any tax liability based upon Elk being insolvent as of September 2012?

A Not that I recall.

Q Do you recall any discussion about a date when Elk may be insolvent?

A No, I do not.

Q We can go to the board minutes of May 5th, 2011.

MS. BILODEAU: That's been marked Exhibit 14.

(Board meeting minutes dated May 5, 2011, was marked Exhibit 14, for identification, as of this

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date.)

Q Would you -- when you've had a chance to open Exhibit 14, would you just generally review Exhibit 14 just to be able to tell us what it is.

A It's a long document. Just bear with me.

Q Again, I'll point you to where I would like you to refresh your recollection. I just wanted to know generally what the document is.

A This looks like a board meeting that was held after we executed the stock purchase agreement for an investment by Columbus Nova into AmeriTrans and Elk.

Q If you look at page 2, Approval of the Stock Pledge Agreement.

A Um-hum.

Q Mr. Feinsod, introduced the next order of business concerning the need. It says: Amend and restate the stock pledge agreement entered into between the company and AmeriTrans

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Holdings, LLC, the secured party in connection with the company's bridge loan in order to release the common stock of Elk Associates, Elk stock, from the existing pledge thereof and to substitute other assets of the company as collateral in lieu of the Elk stock.

A I have reviewed it, yes.

Q Okay. The motion to take that action was approved by the board at this meeting; is that right?

A Correct.

Q And what was the other collateral -- other assets of the company's collateral that was used to secure the bridge loan?

A I'm trying to -- if I recall, when we made the loan to -- when AmeriTrans Holdings made the loan to AmeriTrans, they asked for a pledge of Elk stock. We gave them a pledge of Elk stock.

Shortly thereafter, we executed the agreement with the stock

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purchase agreement, and submitted the pledge of Elk stock and notified SBA of the pledge of Elk stock.

The Elk -- the pledge of Elk stock was considered a violation of the regulations. We were made aware of it, and we quickly entered into discussions with Columbus Nova to remove the pledge and replace it with substitute collateral.

I don't remember what the collateral is, but I believe it is specified in the record. And that -- and SBA was satisfied with that matter.

Q Do you know what -- can you be more specific as to what the violation was of the reg with respect --

A I believe it was a direct violation of not being permitted to pledge the stock of an SBIC. And from time to time, SBICs had minor violations, and SBA had a way of dealing with them.

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Q Were the assets that were substituted as collateral for the Elk stock assets owned by AmeriTrans as opposed to Elk?

A I don't recall what the substitute collateral was.

Q Was Elk a guarantor of the bridge loan?

A I don't recall the note, the substance of the note.

Q If we look at the end of the minutes -- actually, you were the secretary at this -- at the meeting of May 5; is that right?

A It should say I was.

I was, yes.

Q Okay.

A And it looks like John Weiner was there as well, so he probably kept the minutes.

Q And would this be an example of what a final version of the minutes would look like after review and approval of the board signed by

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yourself?

A The last page probably does.

MS. CLARKE: Objection to the form.

(Clarification by the reporter.)

A The last page does.

Q Do pages 1 through 8 appear to be a final version of the minutes?

A I can't tell.

Q Do you have any reason --

A I've seen a lot.

Yes, I do. I've been presented with numerous draft minutes today. I can't -- I don't know the integrity of the document.

Q Okay. Do you see anything on the document that says: Draft?

A No, but that wasn't the regular practice of always marking them draft. It was actually probably a less regular process.

Q Do you recall --

Let's turn to e-mail dated

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August 2nd, 2011. I believe it's Tab 4.

(E-mail dated 8/2/11, was marked Exhibit 15, for identification, as of this date.)

MS. BILODEAU: That's been marked Exhibit 15.

A Okay.

Q Have you had a chance to look at Exhibit 4?

A Yes.

Q Okay. Is Exhibit 4 a --

MS. BILODEAU: 14, Steve?

MR. WEINBERG: Yes, I'm sorry.

MS. CLARKE: 15.

Q Is Exhibit 15 a chain of e-mail communications of August 2nd, 2011?

A It appears to begin -- yeah, yeah, it looks like they all are on August 2nd.

Q And it starts with an e-mail that you've sent to various board

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members -- to the board members updating them on the SBA's review of the Columbus Nova transaction; that there was issues the SBA was raising as to whether or not SBA would approve the Columbus Nova transaction.

A It seems to summarize that, yes.

Q And then there were e-mails between yourself and Peter Boockvar which talked about -- Peter was asking you if you were comfortable as to whether this will eventually close.

A And you stated: Comfortable is not in my vocabulary at this point. I'm not sure about anything.

A That's what it says.

Q Is that your understanding that this may -- the SBA may reject the Columbus Nova transaction?

A No.

Q No? What does it mean: I'm not sure about anything?

A I'm not sure about how the

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SBA -- I was never expecting the transaction to be rejected. I always believed that it would be approved.

Q Okay.

A And I wasn't sure about whether -- this actually refers to a part- -- I believe it looks like it refers to a partner coming in to satisfy the false claims about management ownership diversity that SBA had thrown up.

Q Did the SBA always have discretion to reject the Columbus Nova transaction?

A Did they have discretion?

Q Yes.

A I don't know. I don't know.

Q Okay.

A I don't know. What does "discretion" mean in this context?

Q Did the SBA reject the Columbus Nova transaction?

A Ultimately in December -- late December, this was four months

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later five months later than this.

Q Okay. Now --

A In between this e-mail and the rejection, we spent significant time speaking with --

(Clarification by the reporter.)

A After these e-mails and in between the ultimate rejection, which occurred 5 1/2 months later, we had numerous conversations with SBA.

A And even in this e-mail, Marja seems -- I would view this to remember, this refreshes my memory that Marja seemed to give us a way that we could get the transaction done.

Q Again -- okay. If we turn to the minutes of October 5, 2011.

MS. BILODEAU: What was that date again?

MR. WEINBERG: October 5th, 2011. Tab 26.

MS. BILODEAU: That's been marked Exhibit 16.

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(Board meeting minutes dated Oct. 5, 2011, was marked Exhibit 16, for identification, as of this date.)

Q Open Exhibit 16.

A Was Exhibit 16 the minutes of the board of directors of AmeriTrans Capital Corporation on October 5th, 2011?

A It appears to be.

Q Okay. If we go to page 3, the last sentence of the first paragraph on page 3: The board also discussed the company's current financial position, its cash burn rate, the value to holders of the company's common stock, preferred stock, and promissory notes of winding down the company's operations, and the need to complete the financing transaction with CN otherwise in the near future.

Q Did you prepare any type of wind-down plan or liquidation plan for the board to consider?

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A I don't recall. If I did, it would be in the records of the company.

Q Did you prepare any type of cash burn rate analysis for the board to consider?

A I don't recall, but if I did, it's in the records of the company.

Q Could we go to the minutes of November 9, 2011, Tab 37.

MS. BILODEAU: Marked as Exhibit 17.

(Board meeting minutes dated Nov. 9, 2011, was marked Exhibit 17, for identification, as of this date.)

Q Have you been able to open Exhibit 17?

A Yes.

Q Okay. Is Exhibit 17 the board minutes for the board of directors of AmeriTrans Capital on November 9th, 2011?

A Yes.

Q I'd like to direct your

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attention to page 2.

A To refine my answer for the last question, it's also some land written notes outside of the minutes that -- I can't read my own handwriting on the fly, so I don't want to characterize it.

So pages 1, 2, and 3 are -- look like minutes, and then page -- the other pages are handwritten notes, and there is a -- looks like a page of typed notes as well.

Q The first four pages of the exhibit are the minutes of the meeting of November 9th, 2011?

A They appear to be, yes.

Q The handwritten notes, is that your handwriting?

A First two pages, three pages are -- yes, that's my handwriting.

Q If we go to page 2 of the minutes.

A Um-hum.

Q There is paragraph -- six

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paragraphs down, sixth and seventh paragraphs.

A Mr. Feinsod invited?

Q Yes. Does that refresh your recollection about those two paragraphs?

A Yes.

Q Okay. Do you recall what was the discussion about the zone of insolvency other than what's written here in the minutes?

(Clarification by the reporter.)

A I don't.

MR. WEINBERG: Zone of insolvency.

(Clarification by the reporter.)

A I don't recall. It was a long time ago.

Q Do you recall what the discussion was about metrics that would be used to determine whether the company is insolvent?

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A No, I don't.

Q Did you review any of the metrics to determine whether the company was insolvent?

A As I mentioned, I don't remember discussing the metrics.

Q Okay. Did you review or discuss with the board as to making a determination whether the company was insolvent?

A I don't recall.

These board -- the meeting was -- it was a long board meeting. I'm trying to just -- it's just a summary.

Q Okay. Did you take any -- did you take any steps to change the operation of the company with respect to the use of Elk assets for AmeriTrans after the meeting of November 9th, 2011?

A I don't understand the question.

MR. SEIDEL: Objection.

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Foundation.

MR. WEINBERG: Sorry, did you get the answer, Judy?

MS. COURT REPORTER: Yes, sir.

Q Did you take any measures to utilize the proceeds of the sale of Elk's assets only for Elk's creditors after the November 9th, 2011, meeting?

MS. CLARKE: Object to form. And foundation.

MR. SEIDEL: Objection.

A I don't recall.

Q The next minutes, are December 15th, 2011, Tab 38.

(Board meeting minutes dated Dec. 15, 2011 with attached handwritten note, was marked Exhibit 18, for identification, as of this date.)

MS. BILODEAU: They've been marked Exhibit 18.

Q Is Exhibit 18 the December 15th, 2011, board meeting

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minutes?

A Pages 2 and 3 are, yeah.

Q And the first page are handwritten notes. Is that your handwriting?

A Yes.

Q If we go to the bottom paragraph on page 1, could you review that paragraph, please.

A Okay.

Q Do you know what -- do you remember what the default -- technical default was under the note, the CN note issued by the company --

A Yes.

Q -- in favor of AmeriTrans Holdings, LLC?

A Yes.

Q What was it?

A It was a -- we had fallen below a minimum net asset value, \$4 million, I believe.

Q If you -- when you say a "net asset value," that was for AmeriTrans

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stock?

A No.

Q What was -- that was for AmeriTrans?

A Let me back up. It was a defined term under the agreement that tied to the '40 act.

(Clarification by the reporter.)

A '40 act, 1940 act.

Q You see the last sentence: Mr. Feinsod indicated the company would most likely sell its life settlement policies to finance payments due under the notes, but the sale process would take a few weeks to complete in order to maximize the value received for the policies?

A Correct.

Q Does that refresh your recollection as to what assets were used to secure the note?

A What note?

Q What's referred to as the CN

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note; in other words, the bridge loan.

A No, I don't -- it doesn't.

Q Was AmeriTrans able to sell the life settlement policies to pay the note?

A I don't recall.

Q Was AmeriTrans able to sell the life settlement policies in order to pay Elk back?

A This was during the period when we were expecting -- we were waiting on SBA approval still, and I don't recall.

Q Do you -- okay.

If we look at the next minutes, February 24, 2012.

(Board meeting minutes dated Feb. 24, 2012, was marked Exhibit 19, for identification, as of this date.)

MR. WEINBERG: Tab 42.

MS. BILODEAU: That's been marked Exhibit 19.

Q If you can open Exhibit 19.

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Please open the minutes and --

A Yes.

Q Okay. Is Exhibit 19 the board meeting minutes for Elk and AmeriTrans of February 24th, 2012?

A It appears to be.

I said it appears to be. I apologize if you didn't hear me.

Q Is this the meeting where Elk -- where the board approved a -- what's called a senior secured note to loan \$4 1/2 million to AmeriTrans?

MR. HASHEM: Objection to form.

A I'd have to read the whole minutes. This was a board meeting following the termination of the S- of the Columbus Novis -- Columbus Nova transaction --

Q Okay.

A -- and rejection the Full Circle transaction as well, and was the beginning of some of the inconsistent behavior by Paul Salgado and SBA that

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led to the company litigating. That was the -- it looks like that was the bulk of what we talked about.

Q Okay. Was -- the litigation that you sought was for preliminary injunction, correct?

A Among other things.

(Clarification by the reporter.)

MR. HASHEM: Michael, please wait -- let me object before you finish.

Objection. Mischaracterizes the prior testimony.

MR. WEINBERG: Okay. And the answer was: Yes, among other things.

Did you get the answer, Judy?

MS. COURT REPORTER: I just got "Among other things."

Q Okay. Do you know that the relief for the preliminary injunction was denied, correct?

A Yes. I don't believe we

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were -- okay.

Q If you take a look at the minutes for --

A The litigation was ultimately successful.

Q Would you -- there was a settlement agreement that was entered into; is that right?

A Yes. And the litigation was ultimately successful for Elk.

Q In terms of -- would you briefly review the minutes of February 24th, and see if this is the meeting where Elk -- where the board approved a loan from Elk to AmeriTrans?

MR. HASHEM: Objection to form. Foundation.

A See where we talked about inconsistencies and the move to the office of liquidation.

Q Was -- was the movement to the office of liquidation based upon the letter rejecting the Full Circle term sheet by the SBA?

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A Was the what?

Q Did you know at this time that the SBA was making a referral to the office of liquidation based opinion the rejection of the Full Circle term sheet?

A No. They were independent of each other.

And at this point, it looks like our counsel was advising us that we had a period to cure before we move into liquidation.

So we were evaluating the SBA's actions with respect to their failure to deliver the proper notice and their failure to act according to their own policies and procedures over the last couple of months.

Q I'm not asking you to read the minutes. And I don't have a --

A You asked me to refresh my memory. I apologize.

Q What I'm asking is -- well, we'll ask a question.

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What I asked was to review the minutes and to -- so that you can satisfy yourself as to whether this was the meeting where the Elk board agreed to make a loan to AmeriTrans for \$4 1/2 million.

A On page 7, this contains that -- the resolution to make the loan.

Q Now, with respect to the loan from Elk to AmeriTrans, there was a discussion about: The SBA and/or the Elk receiver may have a claim in terms of an intercompany secured loan.

Do you recall that?

A No.

MR. HASHEM: Objection.

A Sorry.

Q Do you recall that there was a discussion that the SBA may object to an intercompany loan?

A I don't recall. I've only gotten to page 5 of the minutes.

Q Do you recall a discussion

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that the SBA may object that such a loan may affect Elk's ability to repay the debentures to the SBA?

MS. CLARKE: Object to form.

Lacks foundation.

A No, I don't recall that.

(Whereupon, a discussion was held off the record.)

Q On page 5 in the third paragraph down, Mr. Press stated in the middle of the paragraph: Elk on the theory that a loan to AmeriTrans is improper because it subverts Elk's ability to repay its debt to the SBA.

Does that refresh your recollection?

A With respect to what the minutes say, yes.

Q Do you recall any discussion about any other basis for the SBA to object to the loan from Elk to AmeriTrans?

A No, I don't recall what was discussed with the specifics to this.

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This is a --

Q Okay.

A These -- well, hold on one second. I'm trying to refresh my memory.

This is a long board meeting. I don't recall. It looks like we spent three hours, four hours discussing this that's reduced to three or four pages.

Q Do you recall discussing about the short term of the loan and the importance of prepaying the loan between Elk and AmeriTrans?

A I don't recall it, no.

Q Do you have any -- do you remember any --

Do you have any understanding as to why you thought it was important to prepay the loan before it was due from AmeriTrans to Elk?

MS. CLARKE: Objection to the form. And lacks foundation.

A I don't recall.

Q Was AmeriTrans able to pay

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Elk back for the loan?

MS. CLARKE: Objection to the form.

A I don't -- I don't recall.

Q At this meeting of February 24th, was there any discussion about the board reviewing any metric or measure to determine whether the company Elk or AmeriTrans was insolvent?

A I don't recall.

MR. WEINBERG: Could we have, I'm sorry, the February 22nd letter.

MS. BILODEAU: Tab 10?

MR. WEINBERG: Hold on. We could -- let's move on on that. Let's go right to the -- I think there was a March 7th --

Instead of the February 22nd letter, could we go to the minutes of April 25, 2012.

MS. BILODEAU: Marked Exhibit 20.

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(Clarification by the reporter.)

(Board meeting minutes dated April 25, 2012, was marked Exhibit 20, for identification, as of this date.)

Q You could open Exhibit 20.

Exhibit 20, the minutes for the April 25th, 2012, board meeting of AmeriTrans and Elk.

A Yes, I have them in front of me.

Q Okay. Do you see -- if you turn to page 3, the third full paragraph?

A Where Lee Forlenza and Ellen Walker reached out to SBA?

The boards of AmeriTrans and Elks then discussed --

(Clarification by the reporter.)

A Sure. The minutes state that the boards of AmeriTrans and Elk then discuss possible claims against Ellen

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Walker and/or Lee Forlenza based on certain communications included among the discovery materials provided by the SBA.

Q Okay.

A Is that the paragraph?

Q No. That's the paragraph you picked.

A Sorry. I --

Q If you look --

A That's the third one.

(Clarification by the reporter.)

Q That's rule 1.

Let's go to the next paragraph, please: The board then discussed potential liquidation models.

A The fourth paragraph, then, not the third, correct?

Q We're not arguing. If you can --

A I'm asking -- I'm asking --

Q I'm asking you to look at the paragraph beginning: The board then

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discussed potential liquidation models.

A Got it.

Okay.

Q Does that paragraph refresh your recollection as to whether or not you prepared any analysis of a liquidation model for AmeriTrans or Elk for the board meeting of April 25, 2012?

A At that time, no.

Q If you go to the next page, page 4, the first full paragraph beginning: Mr. Singer then asked whether and when the board would owe fiduciary duties to the SBA, as a creditor of Elk, particularly if liquidation is required.

Would you review that paragraph, please.

(Clarification by the reporter.)

Q Was -- did the board make a determination as to whether Elk was insolvent as of April 25th, 2012?

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A It doesn't look like it did.

Q Did the board review any metrics for measures to determine whether Elk was insolvent as of the board meeting of April 25th, 2012?

A I can't tell from these minutes.

Q Did Elk change its controls with respect to limiting Elk's assets solely for benefit of Elk's creditors --

MS. CLARKE: Objection --

Q -- as of April 25th, 2012, board meeting?

MS. CLARKE: Objection.

Foundation and form.

A I don't recall.

Q Did Elk change its procedures to limit the proceeds of the sale of Elk assets only for Elk's creditors as of the April 25th, 2012, board meeting?

MS. CLARKE: Objection to the form. And lack of foundation.

MR. SEIDEL: Objection to

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form.

A I don't recall.

MR. WEINBERG: Can we take a five-minute break, please.

MS. CLARKE: Yes.

VIDEOGRAPHER: This will end Media Unit 5. Going off the record at 4:34, October 28, 2021.

(Whereupon, a brief recess was taken.)

VIDEOGRAPHER: We're back on the record. The time is 4:56 p.m., October 28, 2021. This will begin Media Unit 6.

Q If you would refresh your exhibit, please.

(Clarification by the reporter.)

MR. WEINBERG: Exhibit 21.

MS. BILODEAU: Exhibit 21.

(E-mail dated 1/20/12, was marked Exhibit 21, for identification, as of this date.)

Q Mr. Feinsod, have you had a

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chance to look at Exhibit 21?

A I have it open, yes.

Q Do you remember, what did AmeriTrans use the proceeds of the loan from Elk to AmeriTrans to pay?

A I believe just to operate the business in general.

Q Didn't AmeriTrans use the money to pay Columbus Nova on the bridge loan?

A Part of the bridge loan, yes.

Q It wasn't --

A Part of the loan, excuse -- the loan, excuse me.

Q It wasn't --

A Originally.

Q -- of the loan --

(Clarification by the reporter.)

Q Wasn't the settlement of the loan \$1,420,000?

A Settlement of the loan? What does that mean?

Q The payment by AmeriTrans to

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AmeriTrans Holding.

MS. CLARKE: Objection.

Foundation.

A I don't recall, but this says it was 1.2 -- that they were willing to -- looks like we were contemplating 1.4 million.

Q Okay. Did AmeriTrans owe money to senior note holders?

A I believe so.

Q Were the senior note holders Steve Etra and various family members?

A I don't know if they were family members.

Q Or various affiliates of Steven Etra?

A I don't know if they were affiliates, but they were associates. Affiliates -- certainly not -- I don't want to use "affiliate" in the defined term.

Q Okay. And did AmeriTrans use the money from the loan from Elk to pay the senior note holders?

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A I believe so.

Q Now, the assets that are -- if you go to page 2 of this document, referring to Exhibit 21 --

A Yes.

Q -- it says: Collateral pool as of 12/31/2011.

A Okay.

Q Are the -- is the collateral pool consisting of Elk assets or AmeriTrans assets?

A I don't recall. I can't tell from this.

Q In terms of the fair value, is this the fair value of collateral that was used with respect to the note between AmeriTrans -- between Elk and AmeriTrans?

MS. CLARKE: Objection to the form.

A The fair value appears to refer to the fair value of each individual asset as of 12/31/11.

Q And what is the fair value

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for the collateral pool as of
12/31/2011?

A 4,666,654.

Q 4 million --

(Clarification by the
reporter.)

Q \$4,666,654; is that right?

A That's what it says, yes.

Q Okay. Now, do you see it
says -- well, on top of this diagram,
it says: Total proposed settlement.

Is that for the CN note and
the senior notes?

A At the top of this it says --
where?

Q Let me help you. The
first -- the first bold entry or topic
is the financial information for the CN
note; is that right?

A Top left, CN note, yes.

Q Okay. And then you have
financial information as to the senior
note, right?

A That's what it looks like,

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yes.

Q And then it says: Total
proposed settlement \$4,166,713.

Is that right?

A Yes.

Q Does that total proposed
settlement refer to settlement of both
the CN note and the senior note?

A Total proposed settlement --
it looks like it is the sum of those,
the two numbers above it, yes.

Q Okay. Then the next line is
the proposed loan, Elk to AmeriTrans,
correct?

A Yeah, on the left, yes.

Q And that's \$4 1/2 million,
right?

A Yes.

Q Then the next line is --
well, before we get to the collateral
pool, it says: Excess working capital
at AMTC.

That's three hundred --
\$333,287, right?

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A That's what the worksheet
says, yes.

Q So that's obviously not
enough money to pay the proposed
settlement, right?

A To pay what? What
settlement?

Q To pay the proposed
settlements of the CN note or the
senior notes?

A Okay. What's not enough?

Q The \$333,287.

MS. CLARKE: Objection to the
form.

A I'm not -- I'm not following.

Q Okay.

A I don't understand the
question.

Q Sure.

A It's after -- the 333,000
would imply that the note was paid
back, imply that the settlement was
paid.

Q Isn't that just listing the

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excess working -- that would be the
excess working capital remaining at
AMTC?

A After the payment of the
settlement.

Q After the payment of the
settlement, and after the loan by Elk;
is that right?

A That's what it seems to lay
out, yes.

Q Okay. And it's laying out
the collateral pool as of 12/31/11,
correct?

A On the left side, yes.

Q Okay. Wouldn't -- isn't that
the collateral pool with respect to the
note between Elk and AmeriTrans?

A I don't believe the note
existed. This is the proposed -- the
proposed collateral pool at the time, I
believe. The note didn't exist at this
point. So there was no collateral pool
yet.

Q Okay. But when the note was

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approved at the February 24th meeting, would these assets have been in the collateral pool?

A I don't recall whether or not they would have been or would not. I'd have to look at the financial statements from at that period.

Q Did Elk take possession of the collateral from AmeriTrans?

A Did Elk -- what -- what does that mean?

Q Did Elk take physical custody of the collateral from AmeriTrans?

MR. SEIDEL: Objection to form.

A I don't know what physical possession would mean in terms of these assets. These assets are -- are documents -- these assets are represented by documents, excuse me. They're not --

Q Did Elk take physical possession of the documents representing these assets?

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A Elk always had possession of these documents.

Q And do you know which custodian had possession of these documents?

A Which custodian had possession of these documents?

Q Yes.

A I do not know. Why would -- I don't understand why a custodian would be relevant.

Q Okay. Would the documents -- well, just would the documents be in AmeriTrans's or Elk's office?

A The documents would exist in multiple places. They could -- there are -- there would be copies of the documents. They weren't securities, to be clear. They were loan documents representing -- they weren't negotiable --

To the best of my knowledge, none of these documents -- none of the documents representing these would

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entitle the holder of such documents to any benefits.

Q Okay.

A So possession might -- possession -- they were always in Elk's possession, but I don't know if that possession is of any meaning.

Q Okay. Then we have the working capital at Elk.

What does that column represent?

A I don't recall. It's a short summary. I don't recall.

Q Was this a summary as to how Elk was going to sell its assets to make the loan to AmeriTrans?

MS. CLARKE: Objection. Foundation.

A I don't recall.

Q Do you know if Elk ever filed a UCC with respect to AmeriTrans?

MS. CLARKE: Object to form.

A Do I know if Elk ever filed a UCC with respect to AmeriTrans?

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I don't believe it -- any one was filed while I was an employee of the company. But no, not in my experience.

Q Now, at the time of 12/31/2011, we had looked at it earlier, wasn't the due from parent over \$10 million?

A I don't recall.

Q Was it -- okay.

Was it approximately \$10.1 million?

MS. CLARKE: Objection.

A I don't recall.

MS. CLARKE: Sorry.

A I don't recall. We can look at the actual schedule, if you'd like.

Q We'd have to go back. Go back to Exhibit 21.

MR. WEINBERG: Where do we have the 468 for the period ending 12/31/2011?

MS. BILODEAU: Exhibit 8.

Q Would you look at Exhibit 8,

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please.

A I have Exhibit 8 open.

Q Okay.

A I have the exhibit. So what would you like me to look at?

Q If you look at the due from parent on line 24, isn't it in excess of 5.1 million?

A Yeah, but I point out that it's nowhere near the 10 million that you referenced before.

Q No problem.

If you look at Exhibit 9.

A I'm sorry? Look at exhibit what?

Q Look at Exhibit 9, please.

A So to answer your question, on this, the corresponding debt was \$5.12 million.

Q Correct.

If you go to Exhibit 9, please.

A Okay.

Q The due from parent for the

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period ending March 31st, 2012, is in excess of \$10 million, correct?

A Yes.

Q Okay. It's in excess of \$10.1 million, correct?

MS. CLARKE: Asked and answered.

A Correct.

Q And that was after the loan was approved by the board February 24th, 2012, right?

A That? That refers to the \$10 million?

Q Yes.

A As of March 31st, 2012, it was \$10 million.

It probably includes that increase.

Q Okay. Now, did AmeriTrans have assets in excess of four million, six hundred -- withdrawn.

Did AmeriTrans have assets that it owned by itself to repay the due from parent to Elk in excess of

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\$10 million?

MS. CLARKE: Objection to the form.

A I believe it did.

Q Was the \$10 million part of the secured note?

MS. CLARKE: Objection to the form.

A The question doesn't -- can't -- I don't understand the question.

Q Okay. Did AmeriTrans secure the full \$10 million that was owed to Elk?

A I -- I don't know. I don't recall.

Q Didn't AmeriTrans secure only the \$4 1/2 million note?

A I don't recall.

Q In terms of the assets on the collateral pool, the fair value of the assets on the collateral pool is \$4,666,654.

MS. CLARKE: Objection to the

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form. Is that a question?

Q Is that correct?

A I don't know. What -- what exhibit are we referring to now?

Q Okay. Let's go to back to Exhibit 21.

A Okay.

According to this worksheet, yes, it was 4.666,654 [sic].

Q Did AmeriTrans own assets other than what's listed in the collateral pool on Exhibit 21?

A I believe it did.

Q What were those assets?

A It owned Elk and all the assets in Elk.

Q Other than the assets in Elk, did AmeriTrans have any other assets from which to pay Elk the due from parent of \$10 million?

A Repeat the question, please.

Q The assets that are listed in the collateral pool are owned by AmeriTrans and not Elk, correct?

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MS. CLARKE: Objection --

A It can't.

MS. CLARKE: -- he said he doesn't know.

Q There were certain assets that you referred to earlier as legacy assets; is that right?

A Yes.

Q Those legacy assets were owned independently by AmeriTrans and are not assets of Elk; is that correct?

A No, that wouldn't be correct. That might have been too general when I spoke before.

Q The life settlement policies were assets of AmeriTrans, correct?

A Life settlement policies were assets of AmeriTrans, yes.

Q Okay. They were not owned by Elk, were they?

A They were not -- I'm thinking of the question.

I don't -- I don't believe so.

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Q Okay. In addition to the life settlement policies, were there some corporate loans or investments owned --

(Clarification by the reporter.)

Q In addition to the life settlement policies, what other assets were owned by AmeriTrans that were not owned by Elk?

A I don't recall specifically. I'd have to look at the company's financial statements.

But there were no corporate loans owned by AmeriTrans.

Q Okay. Any other types of investments that were owned by AmeriTrans?

A I don't -- I don't remember. I didn't -- there were no loans originated by AmeriTrans when I was there. There were no new investments originated for the -- my tenure -- my tenure as an executive.

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Q Excluding Elk assets, did AmeriTrans have its own assets from with which to pay back a \$10 million due from parent to Elk?

MS. CLARKE: Objection to the form.

A I don't recall.

Q In terms of Velocity -- I'm sorry. Let me ask the question. You can close the exhibit.

What was the role between -- withdrawn.

Did AmeriTrans have an investment advisor?

A Did AmeriTrans have an investment advisor?

For a period of time, we engaged Velocity Capital Advisors as an external advisor.

Q And what period of time was that?

A I don't recall specifically, but I'm sure it's in the records of the company.

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Q And what was Velocity's responsibility as an external advisor to AmeriTrans?

A In general, it was to help us source and evaluate corporate loan investments.

Q And did they -- and what did they do to evaluate corporate loan investments?

A Go ahead. I'm sorry.

Q Go ahead. I'm sorry. I interrupted you.

A I don't know if there was somebody objecting. I apologize.

What did Velocity do -- can you repeat the question. Sorry.

Q Sure.

Did Velocity offer advice to AmeriTrans and Elk with respect to purchase of new assets?

A Yes.

Q Did Velocity offer -- have any obligations with respect to maintaining assets of Elk and

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AmeriTrans?

A I wouldn't know what "maintaining" means. I apologize.

Q Okay. Would Velocity offer advice as to when to sell assets of Elk or AmeriTrans?

A Let me back up.

Velocity offered no advice with respect to assets of AmeriTrans. All the advice with Velocity was for the corporate loan program, and all those corporate loans were held by Elk.

So if you could repeat the question. Or if that answers your question.

Q Was -- okay.

And what was Velocity's obligations with respect to sale of Elk assets?

A While they were an active advisor, to give advice. That was it.

Q Was Velocity consulted with respect to the sale of Elk's assets in March of 2012?

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A I don't recall specifically.

I believe it may -- March of 2012, their agreement may have been terminated already.

Q Okay.

MR. WEINBERG: The next exhibit, could we go to the termination. I believe it's in the e-mail folder.

(E-mail dated 3/1/12, was marked Exhibit 22, for identification, as of this date.)

MR. WEINBERG: Tab 13.

MS. BILODEAU: That's been introduced as Exhibit 22.

Q Generally, before we -- you could look at Exhibit 22, but generally, what was the practice of Elk in terms of how it would consult with Velocity regarding the sale of an asset prior to the termination of the Velocity agreement?

A We would speak with them about -- about obtaining bids from

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different desks and using their contacts, quote/unquote, to facilitate disposals of assets.

These are not securities, but they are -- they are tradable.

Q And Elk's assets consisted of loans and corporate loans, correct?

A Elk's assets, when?

Q We're talking about the period of time from 2011 through 2013.

A I can't speak to the totality of the portfolio, but the bulk -- a substantial portion was corporate loans.

And this was -- this letter -- this letter -- this termination letter comes about a year after Velocity had actually been terminated.

In other words, they had the termination letter in their possession already.

Q When was Velocity terminated?

A I believe they were delivered

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the termination when we signed the Columbus Nova stock purchase agreement.

Q Okay. So the letter that you're looking at, Exhibit 22, the letter dated March 1st, 2012.

A I have it open, yes.

Q Okay. You're saying the agreement with Velocity was no longer in effect based upon the Columbus Nova stock purchase agreement?

A I believe so, correct.

Q Was -- based upon the Columbus Nova stock purchase agreement, would the substitution of advisors take place upon consummation of the transaction?

A I don't --

MS. CLARKE: Objection to the form. And lacks foundation.

A I don't recall the specifics of it.

Q Was --

A It created some acrimony between Velocity

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and AmeriTrans/Elk following the entry into the stock purchase agreement with Columbus Nova.

They were upset that they were being terminated.

Q But obviously, the Columbus Nova agreement did not close, correct?

A The Columbus Nova did not close because of -- because of the SBA's failure to advance --

Q I didn't ask why, I just asked you yes or no if it closed.

A Okay.

Q Okay. Is the letter correct that the Velocity was not consulted with respect to the sale of Elk's assets on or before March 1st of 2012?

A No, it's not correct.

Q Velocity was consulted regarding the February 29th sale of Elk's assets?

A Significant --

Sorry.

MS. CLARKE: Sorry.

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Objection to the form. And

I'm not sure there's any foundation for a February 29th sale of assets.

MR. WEINBERG: Okay.

A Yeah.

Q With respect to the statement: In a shift from the portfolio -- sell --

In the second paragraph: Given the apparent --

(Clarification by the reporter.)

Q Given the apparent material shift in portfolio strategy resulting from the urgent desire to sell Elk's most liquid assets, for which we had no involvement and were not consulted, notice is hereby given that the advisors elected to terminate the advisory agreement.

Is it correct that Elk did not notify Velocity with respect to the sale of its assets during February of

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2012?

MS. CLARKE: Objection.
Foundation.

A No, it is not correct.

Q Okay.

A Velocity was consulted about the sale of every asset.

Q Okay. What was the consultation with Velocity with respect to the sale of Affinity?

A I don't recall specifically --

MS. CLARKE: Objection.
Foundation.

A Sorry.

Q What was the --

(Clarification by the reporter.)

Q What was the consultation with Velocity about the sale of Miramax?

MS. CLARKE: Objection.

Lacks foundation.

A I don't know what Miramax is.

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Q Do you know what -- do you know Miramax is an asset of Elk -- was an asset of Elk?

A What -- Miramax what?

Q Do you know if Miramax was an asset of Elk?

A I don't recall.

Q Do you know if --

MR. HASHEM: Sorry. I'm just going to object. The letter is dated March 2012, March 21st, 2011 [sic]

There's no foundation that any of these assets -- none of the asset sales you are referring happened before or after that.

MR. WEINBERG: Okay.

Q Under the Velocity advisory agreement, did Velocity have a right of first refusal with respect to the purchase of Elk assets?

A I don't recall specifically.

Q You made reference to -- you talked about corporate loans that were

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owned by Elk not AmeriTrans.

Did Elk also own commercial loans?

A Yes. And medallion loans.

Q The medallion loans were sold, correct?

A Medallion loans were sold in 2008 -- correct -- 2008 or '9, sorry.

Q So during the period of time of 2011 through 2013, Elk owned corporate loans and commercial loans; is that correct?

A Yeah, I believe that would -- that's correct.

Q Okay. Were there any other types of loans or investments that Elk made during 2011 to 2013?

A I don't recall specifically, but they'd be detailed in the financial statements.

Q Did AmeriTrans own, in its own name, commercial loans?

A No.

Q So all commercial loans that

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were owned by the company were owned in the name of Elk; is that correct?

A Yes. I believe the commercial loans were a category that referred exclusively to AmeriTrans' portfolio, and was -- actually was a term used from OLS -- was a heading within OLS.

That's a different -- that's where the term comes from.

So yes, they were -- Elk, sorry, I didn't finish my answer.

Q Okay. Just so the record is clear, because you said the name of both companies.

With respect to the reference to commercial loans, were they assets or investments solely in the name of Elk and not AmeriTrans?

A I believe that assets that might be classified as commercial loans were classified as such because that was their heading in OLS.

It wasn't a term of art, for

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lack of a better way of putting it. It was medallion -- just to differentiate them from medallion loans, excuse me.

Q Were they loans that were assets of Elk, or were the commercial loans assets of AmeriTrans?

A I don't recall the specific nuances of it. I apologize.

Q Okay.

A All of the loans -- all of the assets in AmeriTrans were originated prior to the -- to 2009. So before my tenure as an executive. So how they were characterized, I don't recall as well as some of the other ones.

MR. WEINBERG: Okay. I think -- can we go off the record for one minute.

VIDEOGRAPHER: Going off the record. The time is 5:31.

(Whereupon, a brief recess was taken.)

VIDEOGRAPHER: We're back on

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the record. The time is 5:36.

MR. WEINBERG: We'll break here and continue the deposition on a day to be mutually agreed upon between the parties and the witness.

MR. HASHEM: That's okay with counsel for Feinsod and Feinstein.

MR. SEIDEL: Same for the independent directors.

VIDEOGRAPHER: This will end Media Unit 6 in the deposition of Michael Feinsod and conclude the recording of his deposition.

We're going off the record at 5:36 p.m., October 28, 2021.

(Time noted: 5:36 p.m.)

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A C K N O W L E D G E M E N T

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, MICHAEL ROSS FEINSOD, certify, I have read the transcript of my testimony taken under oath in my deposition of October 28, 2021; that the transcript is a true, complete and correct record of what was asked, answered and said during this deposition, and that the answers on the record as given by me are true and correct.

MICHAEL ROSS FEINSOD

Sworn and subscribed to before me

this _____ day of _____, ____.

Notary Public

C E R T I F I C A T I O N

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, JUDITH CASTORE, Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That MICHAEL ROSS FEINSOD, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that this transcript of such examination is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of October, 2021.

Judith Castore

JUDITH CASTORE

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I N S T R U C T I O N S T O W I T N E S S

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty(30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

E R R A T A

I wish to make the following changes,
for the following reasons:

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WITNESS' SIGNATURE

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
17-cv-3586(JS)(JMW)

- - - - -x

U.S. Small Business Administration :
As Receiver of ELK ASSOCIATES FUNDING
CORP.,

Plaintiff,

- against -

MICHAEL FEINSOD, SILVIA MULLENS,
RICHARD FEINSTEIN, GARY GRANOFF,
STEVEN ETRA, JOHN LAIRD, IVAN J.
WOLPERT, HOWARD SOMMER, MURRAY
INDICK, ELLIOTT SINGER, and PETER
BOOCKVAR,

Defendants.

- - - - -x

November 16, 2021
9:15 a.m.

1
2
3 CONTINUED VIDEOTAPED DEPOSITION
4 of MICHAEL FEINSOD, pursuant to notice,
5 held remotely via Zoom videoconference,
6 before Debbie Zaromatidis, a shorthand
7 reporter and notary public of the State of
8 New York.
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1
2 A P P E A R A N C E S:
3

4 GOTTESMAN WOLGEL FLYNN
5 WEINBERG & LEE, P.C.

6 Attorneys for Plaintiff
7 11 Hanover Square
8 New York, New York

9 BY: STEVEN WEINBERG, ESQ.

10 - and -

11 KELSIE BILODEAU, ESQ.
12

13 MOLO LAMKEN, LLP

14 Attorneys for Defendants

15 Michael Feinsod and Richard Feinstein

16 430 Park Avenue

17 New York, New York

18 BY: RAYINER HASHEM, ESQ.

19 - and -

20 ELIZABETH CLARKE, ESQ.
21
22
23
24
25

1
2 A P P E A R A N C E S: (CONTINUED)
3

4 HOLLAND & KNIGHT, LLP

5 Attorneys for Defendants

6 Independent Directors

7 31 West 51st Street

8 New York, New York

9 BY: MARTIN L. SEIDEL, ESQ.

10 - and -

11 MARIE LARSEN, ESQ.
12
13

14 ALSO PRESENT:

15 DAVID ROTHSTEIN, Videographer
16
17
18
19
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25

1
2 S T I P U L A T I O N S
3

4 IT IS HEREBY STIPULATED AND
5 AGREED by and between the Attorneys for
6 the respective parties hereto that filing
7 and sealing be and the same are hereby
8 waived.

9 IT IS FURTHER STIPULATED AND
10 AGREED that all objections except as to
11 the form of the question, shall be
12 reserved to the time of the trial.

13 IT IS FURTHER STIPULATED AND
14 AGREED that the within examination may be
15 signed and sworn to before any notary
16 public with the same force and effect as
17 though signed and sworn to before this
18 Court.
19
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25

1
2 THE VIDEOGRAPHER: Good
3 morning. We are going on the record
4 at 9:22 a.m. on November 16, 2021.
5 Please note that the microphones are
6 sensitive and may pick up whispering,
7 private conversations, and cellular
8 interference. Please turn off all
9 cell phones or place them away from
10 the microphones as they can interfere
11 with the deposition audio. Audio
12 and video recording will continue to
13 take place unless all parties agree
14 to go off the record.

15 This deposition is being held
16 remotely. This is media unit number
17 1, Volume 2 of the video-recorded
18 deposition of Michael Feinsod located
19 at 200 South Service Road in Roslyn,
20 New York. This deposition is being
21 taken by counsel for plaintiff in the
22 matter of U.S. Small Business
23 Administration as receiver of Elk
24 Associates Funding Corp. versus
25 Michael Feinsod, et al. filed in the

1
2 United States District Court, Eastern
3 District of New York, Civil Case
4 Number 17CV3586JS-JMW, which is
5 related to Civil Case Number 131326.

6 My name is David Rothstein from
7 the firm Veritext New York, and I am
8 the videographer. The court
9 reporter is Debbie Zaromatidis from
10 the firm Veritext New York.

11 I am not related to any party
12 in this action nor am I financially
13 interested in the outcome.

14 Counsel, will now please state
15 their appearances and affiliations
16 for the record. If there are any
17 objections to the proceeding, please
18 state them at the time of your
19 appearance beginning with the
20 noticing attorney.

21 MR. WEINBERG: Steven Weinberg
22 with the law firm Gottesman Wolgel
23 Flynn & Weinberg, PC, attorneys for
24 plaintiff Small Business
25 Administration as receiver for Elk

1 FEINSOD
2 Associates Funding Corp.

3 MS. BILODEAU: Kelsey
4 Bilodeau also of Gottesman Wolgel
5 Flynn & Weinberg for the receiver.

6 MR. HASHEM: Ray Hashem
7 counsel for defendants Feinsod and
8 Feinstein.

9 MR. SEIDEL: Martin Seidel,
10 Holland & Knight, LLC counsel for the
11 independent director defendants.

12 MS. LARSEN: Marie Larsen also
13 from Holland & Knight on behalf of
14 the independent director defendants.

15 THE VIDEOGRAPHER: Will the
16 court reporter please swear in the
17 witness.

18 M I C H A E L F E I N S O D,
19 having first been duly sworn by a Notary
20 Public of the State of New York, was
21 examined and testified as follows:

22 EXAMINATION BY MR. WEINBERG:

23 Q. Good morning, Mr. Feinsod.

24 A. Good morning.

25 Q. As you are aware, this is a

1 FEINSOD
2 continuation of the deposition of October
3 28, and the same instructions apply.

4 Do you have any questions about
5 that?

6 A. No.

7 Q. Okay. We understand that you
8 have taken a new position.
9 Congratulations.

10 What is your new position for
11 employment?

12 A. I have not.

13 Q. Okay. Do you --

14 A. I'm sorry.

15 Q. Do you anticipate starting
16 employment soon?

17 A. Potentially, yes. Thank you.

18 Q. Good luck. Do you know who
19 that will be with or you don't know yet?

20 A. It's been announced, but the
21 transaction hasn't closed yet.

22 Q. Okay. In terms of -- and will
23 that be a position as a chief officer or
24 financial -- executive or financial
25 officer with the company?

FEINSOD

A. I'm sorry. What was the question?

Q. Will you be in management for a publically-traded company?

A. If the transaction closes potentially, yes.

(Exhibit 23 marked for identification.)

Q. If you would turn to Exhibit 23, please. Let me know when you have it open.

A. I have it open.

Q. Okay. Do you see that there is an e-mail dated March 7, 2012, and would you review that. The first line of the e-mail is that there was a wire transfer received into --

A. To Silvia Mullens is the first line?

Q. It's from Dominic Granito to Silvia Mullens. It is an e-mail dated March 7, 2012, correct?

A. I believe so.

Q. Okay. And in terms of the substance of the message of the e-mail if

FEINSOD

you skip down below bank debt summary line, summary it talks about a wire transfer?

A. I see -- yes.

Q. Okay. Did that take place -- and/or does this e-mail refresh year your recollection that Elk assets of Affinity Group and Mirimax were sold, and the money was wired into the Elk Signature Bank account?

A. No.

Q. Do you know --

A. I am not a party to this e-mail. It is the first time I've seen it.

Q. Do you have any reason to doubt whether this information is incorrect that the Elk assets at around March of '12 for Affinity and Mirimax were sold resulting in proceeds of \$2.7 million to the Elk Signature Bank account?

MR. HASHEM: Objection. It says \$2.5 million.

MR. WEINBERG: "Wire transfer was received into EAFC Signature Bank

FEINSOD

for the sale of Affinity Group and Mirimax \$2,743,878.

MR. HASHEM: Are we referring now to the second page or the first page?

MR. WEINBERG: Just the first page.

MR. HASHEM: Okay.

MR. WEINBERG: Just the first page of the exhibit.

A. I hadn't looked at the second page. I apologize.

Q. We are just looking at the first page of the exhibit.

A. Okay.

Q. Do you have any reason to believe that that transfer -- that the wire transfer into the Elk account from the sale of Affinity and Mirimax did not occur?

A. I have know recollection of this.

Q. Okay. If we look at the second page of the exhibit, it is a funds

FEINSOD

transfer request dated March 7, 2012 from Elk to Ameritrans of \$2.5 million; is that correct?

A. I have read the document, the second page. What is the question now?

Q. Is this the page -- is this a funds transfer requested on March 7 from Elk to Ameritrans in the amount of 2 half million dollars that you authorized by your signature?

A. It appears to be. Yes.

Q. Okay. And is this -- and there is a reference information. Is this part of the senior -- what was referenced as the senior secured note advance?

A. It appears to say that at the bottom of the page.

Q. Okay. Do you have any independent recollection of this transfer occurring?

A. No. It occurred almost ten years ago.

Q. Okay. Would this transfer have been part of what was discussed as a

FEINSOD

senior secured note advance at a February 24, 2012 board meeting?

A. I don't recall.

Q. If we look at the third page of the exhibit, it is a funds transfer request of the same date, March 7, 2012, from Ameritrans to Ameritrans Holdings, LLC in the amount of \$1420,000 with your signature; is that correct?

A. It appears to be.

Q. Do you have any reason to doubt that this is not an accurate funds transfer request form that you executed?

A. I don't. No, I don't.

Q. Okay. And in the reference information it says "payoff amount." Is the payoff amount for the Renova bridge loan?

A. I'm sorry. What --

Q. The \$1,420,000, is this the payoff amount from Ameritrans Capital Corporation to Ameritrans Holdings for the Renova bridge loan or what is commonly referred to as Columbus Nova?

FEINSOD

A. I don't recall.

Q. You can put this away, and can we go to Exhibit 24.

(Exhibit 24 marked for identification.)

Q. If we could go to page 20 -- 5 of Exhibit 24.

A. Page 5, is that what you said?

Q. It is an e-mail --

A. Is it marked?

Q. No. You have to count. I think it would be PDF page 5.

A. I believe I am there.

Q. Okay. This is an e-mail from Dominic Granito to Silvia Mullens that is dated it looks like March 19, 2012. There is a CC to Rick Feinstein. You are not a CC on this e-mail.

In terms -- the first line of the information below bank debt summary line summary, "Wire transfer received into Elk EAFC Signature Bank for the sale Synscort \$853,776.71."

Do you see that?

FEINSOD

A. Yes, I see it.

Q. Okay. Do you recall that the Elk assets of Synscort was paid -- was sold at this time, and Elk received the proceeds of the sale of Synscort?

A. No.

Q. Do you recall the next line 1.7 million was transferred from Elk to Ameritrans both at Signature Bank for the senior secured loan?

A. I see the e-mail. I see what it is, but I am -- this is the first time I've seen this e-mail.

Q. In terms of a transfer from Elk to Ameritrans, would you be one of the two authorized signers to effectuate that transfer?

A. Say that again. I didn't understand the question. I apologize.

Q. In order to transfer funds -- in order to do a funds transfer request from Elk to Ameritrans, were signatures required for such a transfer?

A. I believe so. Yes.

FEINSOD

Q. For the \$1.7 million transfer from Elk Funds to Ameritrans, whose signatures would be required to affect the transfer?

A. I don't recall. It would be -- it wasn't specific as to personnel I believe.

Q. Okay. Did you have signature authority to make that transfer?

A. I don't recall.

Q. Did Mr. Feinstein have signature authority to make that transfer?

A. I don't recall.

Q. And then the next line "\$2,650,000 were paid out of AMTC Signature Bank for AMTC notes payable."

Do you see that information?

A. The next line --

Q. The note --

A. Yes, I see the line. Sorry. I went to the next page.

Q. Do you know who the notes payable was at AMTC --

A. No. I don't recall.

FEINSOD

Q. Do you know if that was the Etra for the -- or what has been called the senior notes or Etra affiliated notes?

A. I don't recall.

Q. If you turn to the next page, page 6, you have a transfer dated -- a funds transfer request dated March 16, 2012 from Elk Funds to Ameritrans Capital Corporation in the amount of \$1.7 million.

Do you see that?

A. In the amount of what?

Q. \$1.7 million?

A. I have that one.

Q. I'm sorry?

A. Yes. I have that page open.

Q. Okay. And is that your signature on the client signature line?

A. Yes. It appears to be.

Q. And do you see the reference information "senior secured note advance"?

A. Yes.

Q. Okay. Do you have any reason to believe -- to believe that the information on the funds transfer request from page 6

FEINSOD

is inaccurate?

A. It is the first time I have seen it. I don't know.

Q. Do you recall seeing it when you signed it?

A. You asked if I had -- this is the first time I have seen this -- that I recall seeing this copy.

Q. Okay. I mean do you have any reason to believe that the information of the transfer from Elk of 1.7 million on March 16, 2012 to Ameritrans for the senior secured note advance signed by you is inaccurate in any way?

A. No. I don't believe this is inaccurate.

Q. Okay. Page 7 is an e-mail from Dominic Granito to you, Michael Feinsod, and Silvia Mullens with a CC to Rick Feinstein; is that right?

A. Yes.

Q. And it is dated March 21, 2012, correct?

A. Yes.

FEINSOD

Q. Okay. And the first line of the substance of the e-mail is "Wire transfer was received into EAFB Signature Bank for the sale of Fairway \$1,428,001.29; is that right?

A. Yes. That is what it says.

Q. Okay. Do you recall that Fairway was an Elk asset that was sold, and the proceeds were received as stated in this e-mail of March 21, 2012?

A. No, I don't recall.

Q. If you go to page -- I'm sorry. On -- on the page that we were looking at, page 6, do you have any reason to believe that that information regarding the sale of Fairway and the proceeds into Elk's bank account is inaccurate?

A. No.

Q. Okay. Page 7 is an e-mail from you, Michael Feinsod, dated March 23, 2012 to Dominic Granito with a CC to Rick Feinstein. The subject is "Senior note"; is that right?

A. Yes.

FEINSOD

Q. Okay. "Please wire 300,000 from Elk to Ameritrans. This is the final advance under the note."

Do you recall that transfer?

A. No, I don't.

Q. Do you have any reason to believe the information in the e-mail is inaccurate?

A. It is different than the other e-mails you showed me.

Q. Do you have any reason to believe that the -- the information about please wire -- the request to wire 300,000 from Elk to Ameritrans and this is the final advance under the note as to whether or not that is inaccurate in any way?

A. As I said, it looks significantly different from the other e-mails you have shown me today.

Q. Other than looking different, do you think the substance of that information is accurate?

A. I don't have an opinion on that.

Q. Sorry. What?

FEINSOD

A. I don't have an opinion on that.

Q. If we go to the funds -- the next page, page 9, funds transfer request form dated March 23, 2012 in the amount -- it is from Elk Associates to Ameritrans Capital Corporation in the amount of \$300,000 with your signature as the -- one of the client signatures; is that correct?

A. Yes, that is correct.

Q. And is Mr. Feinstein the other client signature?

A. I do not know.

Q. In the reference information the -- for the fund transfer request of 300,000 on March 23, 2012 from Elk to Ameritrans, it states it is for the senior secured note advance; is that correct?

A. That is what it says.

Q. Do you have any reason to believe that information is inaccurate?

A. No.

Q. If we go to the next page, page 10, the March 23, 2012 funds transfer

FEINSOD

request is from Ameritrans Capital Corporation to John Hancock Life Insurance Company of New York in the amount of \$140,941.91; is that correct?

A. That is correct.

Q. Okay. And is that your client -- is that your signature where it says "Client signature authorizing the transfer on March 23, 2012 from Ameritrans Capital Corp. to John Hancock Life Insurance Company of New York?

A. Yes.

Q. Was that a payment of premium for one of the life settlement policies owned by Ameritrans Capital Corporation?

A. I don't recall.

Q. Do you know what the payment was for the -- that is in the reference information of the Bernard Pollack policy number, and then it gives a policy number for the John Hancock Life Insurance Company of New York on behalf of Ameritrans Capital Corporation?

A. It says "Bernard Pollack policy

FEINSOD

number 59669523" on the reference number page.

Q. Okay. I asked you if you knew what that payment was for.

A. I don't recall.

Q. Okay. Do you recall that Ameritrans Capital Corporation had life settlement policies as an asset of Ameritrans?

A. Yes.

Q. Do you recall that Ameritrans Capital Corporation made payments of premiums for those life settlement policies from advances that Elk had made to Ameritrans?

A. I don't understand the question. I apologize.

Q. Elk loaned money to Ameritrans, right?

MR. HASHEM: Objection.

Foundation.

Q. Do you know if Elk loaned money to Ameritrans?

A. Not that I am familiar with.

FEINSOD

Q. Did Elk make a \$4.1 million loan to Ameritrans?

A. Elk had a senior secured note, yes.

Q. Okay. And we just looked at the transfers previously from Elk to Ameritrans.

Did Ameritrans use those monies to pay among other things the premium due for the life settlement policies?

A. I don't recall.

Q. Did Elk use those funds to pay Columbus Nova -- I'm sorry. Did Ameritrans use the funds received from Elk to pay the loan for Columbus Nova?

A. I don't recall.

Q. Did Ameritrans use the monies received from Elk to pay the Etra affiliated note holders?

A. I don't recall.

Q. On page 11, we have an e-mail from Michael Feinsod to Dominic Granito dated June 22, 2012. "Please transfer \$175,000 from Elk to Ameritrans for

FEINSOD

business development expenses."

Do you see that e-mail?

A. Yes.

Q. Okay. What was -- was that an advance from Elk to Ameritrans?

A. I don't recall.

Q. What -- were there terms for the advance in terms of when Ameritrans had to repay Elk for the 175,000?

A. No, not specifically. It was the normal course of business.

Q. What was normal course of business?

A. The advancement of business development expenses from -- between the parent and the subsidiary.

Q. Was there any -- prior to Elk make the advance to Ameritrans, was there any determination as to solvency of Elk by management?

A. I don't recall.

Q. Was there any determination of solvency prior to the advancement of the \$175,000 solvency by the Board of

FEINSOD

Directors?

MR. SEIDEL: Objection to form. No foundation.

Q. You can answer.

A. Yes, I don't -- I don't recall and I don't know.

Q. Okay. Did Ameritrans owe Elk interest for the advance for business developments expenses of \$175,000?

A. I don't recall.

Q. And the next -- on the same date, June -- if you go to the next page on the same date, June 22, 2012, the funds transfer request in the amount of \$156,688.28 from Ameritrans to John Hancock Life Insurance Company for the Bernard Pollack, and then it gives a policy number.

Is that your signature on the bottom of the transfer request?

A. It is.

Q. Okay. Does this page refresh your recollection as to whether this was a payment for the premium of the life

FEINSOD

settlement policy by Ameritrans to John Hancock?

A. No. Again, it looks significantly different than the other wire transfers you have shown me.

Q. Other than looking different, do you have any reason to question the accuracy of this document for the funds transfer request of June 22, 2012?

A. Potentially, yes.

Q. Is that your signature on the page? Is the same information -- is that your signature on the page?

A. On what page?

Q. Page 12 of -- page 12.

A. It appears to be. Yes.

Q. Okay. On the -- now, what was the -- what was -- what was the basis for management to advance monies to -- from Elk to Ameritrans for business development expenses?

A. What was the basis in general? It was permitted -- we were -- that was the guidance we were given it was an SBIC

FEINSOD

on how -- on how to handle parent company intertransfers.

Q. And was this a transaction that was authorized by the Board of Directors?

MR. SEIDEL: Objection.

A. What transaction are you talking about?

Q. The advance of \$175,000 from Elk to Ameritrans.

A. I don't recall that specifically.

Q. Was this a transaction that was reviewed by the Board of Directors directors?

MR. SEIDEL: Objection to form.

A. I don't recall. Sorry.

Q. Would the Board of Directors authorize advances from Elk to Ameritrans?

MR. SEIDEL: Objection vague

A. In general, yes.

Q. Can you recall a -- an example of under what basis the board would generally authorize advances from Elk to

FEINSOD

Ameritrans?

MR. SEIDEL: Objection.

A. Repeat the question, so I can -- I apologize.

Q. You said in general yes, the board would authorize advances from Elk to Ameritrans.

A. Yes.

Q. And how would the board do that?

A. Through the normal course of business, since Ameritrans was formed in 1999.

Q. What would be the normal of practice as to how the board would generally review and authorize advances from Elk to Ameritrans?

MR. SEIDEL: Objection.

A. Retroactively -- sorry. Retroactively on a quarterly basis they would review the Form 468. They would also review reports from the annual audits sent to the board, which would show those intercompany balances.

Q. Would the board also review the

FEINSOD

10Ks and 10Qs for Ameritrans?

MR. HASHEM: I am going to object just to -- you said for Ameritrans. They are consolidated 10Ks.

Q. For Ameritrans Capital Corporation, is that right, Mr. Feinsod?

A. The board would review for -- while I was CEO for the -- each of those filings. Yes.

(Exhibit 25 marked for identification.)

Q. If you go to Exhibit 25, please. Are you at the first page, page 1 of Exhibit 25?

A. I am at the first page of the PDF, 1, 3 --

Q. Okay.

A. I have a ten-page PDF. Would you like me to read the whole thing or stop --

Q. No. The memo exhibit -- the first page is an e-mail from Dominic Granito to Silvia Mullens and Michael

FEINSOD

Feinsod dated August 8th, 2012 acknowledging receipt of the corrected amount of \$967,385.58 cents, and if you look at the -- and the subject is Sheerer funding memo. It looks like a misspelling memo, 8/7/2012; is that right?

A. Yes.

Q. Sheerer is an Elk asset that was sold at about this time, August 7, 2012?

A. I don't recall.

Q. If you go to the next page, we have a funds transfer request dated August 10 of 2012 from -- of a hundred thousand dollars from Elk to Ameritrans Capital Corporation; is that correct?

A. Yes. That looks to be correct.

Q. And is that your signature for the client signature?

A. It appears to be.

Q. Okay. And do you have -- and again this is an advance for business development expense; is that correct?

A. The page says business development expenses.

FEINSOD

Q. And again as a business development expense, that was an advance for which there were no terms between when this had to be repaid or interest by Ameritrans bank to Elk; is that right?

A. I don't recall the terms.

Q. Okay. Do you recall -- do you know if there were terms as to when it had to be repaid back and if interest was to be paid?

A. However -- I don't recall, but I assume it tracks the regulation.

Q. And if you go to the next page, we have a transfer request dated September 19, 2012 in the amount of 175,000 from Elk to Ameritrans.

A. This is the sideways page?

Q. Correct.

A. Okay.

Q. Do you recognize the signatures, the two signatures that were on the page for the \$175,000 transfer?

A. No, I definitely do not.

Q. Okay.

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A. Do you?

Q. And if you go to the next page --

A. Should I go to the one that you just -- so we are putting the one away that doesn't --

Q. We are just going to the next page of the exhibit, which is page 4.

A. Okay.

Q. There is an entry 9/24/12. This is the Ameritrans general ledger of the payment by Ameritrans to the John Hancock Life Insurance Company in the amount of \$156,161.98.

Do you see that?

A. I see Marino Partners credit 457, and I see multiple entries.

Q. Do you see the miscellaneous deposit of September 9, 2012 for the \$175,000?

A. In the debit column?

Q. Yes.

A. Yes, I see that. I see it twice. It is there in two instances.

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Q. And then you see the September 24, 2012 entry of the payment of 156,000 to the John Hancock Life Insurance Company; is that right??

A. I see it what looks like in two places, yes. One place, I am sorry, for that case. Yes.

Q. Does the general ledger entry refresh your recollection as to whether this was an Ameritrans payment to John Hancock Life Insurance Company for the premium of a life settlement policy?

A. Does it refresh my memory as to what, the last page or --

Q. That Ameritrans owned life settlement policies, and that Ameritrans -- does this refresh --

A. These documents -- these documents don't refresh my memory at all.

Q. Okay. Let's -- the next e-mail, which is page 5, we have from Dominic Granito to Michael Feinsod. It is an e-mail dated October 5, 2012, and below the subject line says, "Proceeds from the

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sale of Hudson Products wired into Elk Signature Bank account \$1,000,235 -- \$1,235,855.37; is that correct?

A. That is what it says, yes.

Q. Okay. And then there was a transfer of 64,000 from Elk to Ameritrans and then a payment -- life settlement premium payment paid out of Ameritrans of 63,300 -- \$63,827. Do you see that?

A. I see -- yes, I see where it says that.

Q. Does that refresh your recollection that Ameritrans used Elk advances to pay Ameritrans life settlement premium payments?

A. No. It does not.

Q. Do you have any reason to believe that the information in this e-mail is inaccurate?

A. Again, it looks different than all the others, the various e-mails you showed me.

Q. Other than looking different in

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the terms of substance of the three lines that we read, do you have any reason to believe that the lines that we read are inaccurate?

A. I don't recall at least the numbers. So --

Q. You can put this -- any other reason other than the specific numbers?

A. Unsigned. I don't know.

Q. An e-mail would not be signed, would it?

A. Sometimes they would be.

Q. You haven't seen an e-mail yet that has been signed, have you?

A. I have seen a lot of unsigned documents.

(Exhibit 26 marked for identification.)

Q. If we turn to -- let's put this away, and let's turn to Exhibit 25. Do you see how the first page -- this is dated -- an e-mail dated November 19, 2012 to Dominic Granito to Michael Feinstein; is that correct?

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A. Exhibit 25?

Q. Yes.

A. It is Michael Feinstein.

MS. BILODEAU: Exhibit 26.

Apologies.

THE WITNESS: I'm sorry?

MS. BILODEAU: Exhibit 26.

A. So close this exhibit and go to 26. Okay. Thank you. I don't have an Exhibit 26. I will refresh.

MR. HASHEM: You might need to refresh.

THE WITNESS: I'm sorry?

MR. HASHEM: I am you might of need to refresh right now, Michael.

THE WITNESS: I am waiting -- the circle is spinning right now for Egnyte. It is still spinning. I apologize.

A. There is exhibit 26 and 27 now.

Q. Go to 26, please, page 1. Let me know when it is open.

A. Okay. I have -- it looks like

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a multipage -- the first page --

A. It is a nine-page PDF. I have it. Thank you.

Q. The first page is an e-mail dated November 19, 2012 from Dominic Granito to Michael Feinsod and Silvia Mullens, CC Rick Feinstein; is that correct?

A. It looks -- it appears to be, yes.

Q. "We were paid off on Sterling Info systems 959,000 plus interest of \$3,123 - Elk Signature Bank."

Does that refresh your recollection that Sterling Info Systems was sold and the proceeds were deposited into Signature Bank?

A. It appears to say that, yes.

Q. And do you have any reason to believe that that information is inaccurate?

A. No.

Q. And on November 19 of 2012 Elk -- on the second page Elk advances via a

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funds transfer request \$100,000 to Ameritrans as a business development expense.

Do you see that?

A. This was after -- I do. This was after the settlement agreement I believe.

Q. Okay.

A. So this was after we had entered into the settlement agreement -- I am just trying to refresh my memory -- with the SBA.

Q. Okay. Is that your signature on the client signature page where it says the client signature on the bottom funds transfer request of November 19, 2012 \$100,000 from Elk to Ameritrans.

A. Page 2 of the PDF?

Q. Correct.

A. It looks like my signature, but there is only one signature on this page. So it is a bit odd.

Q. Okay. Is there -- in terms of the transfer by Elk to Ameritrans as a

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business development expense, do you have any reason to believe that that was inaccurate on November 19, 2012?

A. No. It was consistent with past business expense -- past business practices, and again this was after the settlement that we entered into.

Q. What was the authority for Elk to make a -- what was your authority on behalf of Elk to make an advance to Ameritrans for business development expense on November 19, 2012?

A. My authority. I don't understand --

Q. What was the basis by which you are making -- Elk is making advances to Ameritrans for a business development expense on November 19, 2012?

A. Well, we don't have any evidence -- I mean I don't if it was or wasn't. So I don't -- I am just looking at a e-mail here that is dated -- that is signed by one person that you pointed out would usually have two signatures, so I

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actually have doubts as to the validity of it.

Q. I'm sorry?

A. I don't know what this document is or the validity of it.

Q. All right. Let's go to page 3, November 19, 2012. It is a fund transfer request of \$100,000. This is from Ameritrans Capital Corporation to Bradway Capital GAB LLC, and it says "per subscription agreement." With your -- is that your signature on behalf of the client?

A. Yes. And there is another signature below this.

Q. Okay. And what is the basis for Ameritrans to make an investment into Bradway Capital Corporation with advanced from Elk?

A. What does that question have to do with this?

Q. Is an Ameritrans --

A. This an Ameritrans -- the wire you showed me is an Ameritrans wire.

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Q. Okay. Did Ameritrans Capital Corporation make an investment into Bradway Capital GAB, LLC?

A. I don't recall.

MR. HASHEM: I object to foundation.

Q. Okay. If you go to the next page it is dated December 19, 2012. It is a fund transfer request in the amount of -- this is page 4. It is a fund transfer request in the amount of 450,000 from Elk Associates Funding Corporation to Ameritrans Capital Corporation for business development expenses, and the client signature is Michael -- what appears to be -- is that your signature on the client signature line?

A. It appears to be.

Q. Okay. And what was the basis for Elk to make an advance to Ameritrans as a business development expense on December 19 of 2012?

A. This -- I mean if I recall, this was after the settlement agreement had

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been entered into, and we were working -- we had surrendered our SBIC license, and we were working to save -- we had agreed with the SBA to -- the SBA was going to forgive a significant amount of debt, and we were going to part ways after settling our lawsuit against them. So that would appear this would be when we were working on funding -- working toward that settlement, fulfilling that settlement agreement.

Q. Did you find -- did Elk make payment to the SBA as required under the settlement agreement?

A. Yes, we did.

Q. Wasn't the payment that was made \$1.2 million?

A. Yes, it was.

Q. Was anything more than wasn't 1.2 million AS THE consideration for the settlement with the SBA?

MR. SEIDEL: Objection to form.

A. No. At the time the 1.2 was

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wired it was exactly the amount that was agreed to within the SBA.

Q. Who was your agreement with?

A. My agreement was with your client.

MR. NAMESH: Counsel --

A. Elk's agreement was with your client.

Q. Wasn't the -- any settlement agreement with the SBA required consideration or payment in excess of \$8 million?

MR. SEIDEL: Objection.

MR. HASHEM: Objection, foundation. Objection.

Mischaracterizes testimony in the record.

A. It mischaracterizes the agreement.

Q. You --

A. If you pull it out -- if you pull out the agreement, we can point it out.

Q. Let's finish with this document,

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Exhibit 26. On December 20 we have payments to John Hancock Life Insurance Company. That is payments from Ameritrans to John Hancock Life Insurance Company. This is on December 20 on pages 5 and pages 6 for two different policies.

Do you see that?

A. Sure.

Q. Do you see those transfer requests?

A. Which page are you asking about?

Q. The amount \$165,154.77.

A. Yes, I see that.

Q. Okay. Is that your signature or the client's signature?

A. It appears to be.

Q. Does that page refresh your recollection as to what the payment of the premium was for?

A. No, I apologize. It does not.

Q. Go to page 6. It refers to a fund transfer request of December 20, 2012 in the amount of \$87,192.98?

A. Yes, I have it in front of me.

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Q. And that is a payment to John Hancock Life Insurance that is for a different policy, George Boris policy; is that correct?

A. It appears to be.

Q. And is -- was George Boris an employee of Ameritrans?

A. I don't recall.

Q. Is that your signature on the client signature page?

A. Page 6, yes.

Q. Does this refresh your recollection that this is a payment for premium for the life settlement policy by Ameritrans to John Hancock?

A. No, it doesn't.

Q. Go to page 7. Okay. That is a fund transfer request dated December 20 of 2012 from Ameritrans to John Hancock.

Is that your signature on the client signature line?

A. Yes.

Q. And we have a Margaret Bassio policy number. Was Margaret Bassio an

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employee of Ameritrans?

A. I don't recall.

Q. Does this refresh your recollection that this was one of the life settlement policies that were an asset of Ameritrans?

A. No.

Q. If we go to the next page, it is December -- there is a date in December of 2012 that appears to be the 20th. It is handwritten, and it is from Ameritrans to Bradway Capital GAB, LLC, a hundred thousand dollars for a subscription agreement; is that correct?

A. That is what it says, yes.

Q. Is that your signature on the client signature line?

A. It appears to be, yes.

Q. Okay. And do you have any reason to believe that the information on the funds transfer request in December of 2012 from Ameritrans to Bradway Capital is inaccurate in any way?

A. I don't -- no.

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Q. And the last page of the exhibit is Badway Capital GAB dated January 28, 2013. It is a letter addressed to you, Michael Feinsod. "Please accept this letter as verification of your company's investment of 200,000 in Bradway Capital GAB LLC subject to the private placement memorandum dated October 19, 2012. This equates to a 6.2 percent membership interest in the company." And it is signed by Brian Kay, case manager.

Do you ever recall receiving this letter?

A. I don't.

Q. Does this letter refresh your recollection that Ameritrans Capital Corporation made an investment in Bradway Capital GAB, LLC?

A. No -- yes, it does actually.

Q. Okay.

A. Just to the extent that what Bradway Capital was, a bicycle company in Saratoga, New York that we were trying to make an investment in. So that -- to

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that extent now I remember Bradway Capital.

Q. Okay. What was the -- did you have -- did you yourself individually or on behalf of one of your companies have any interest in Bradway Capital?

A. I believe Elk and Ameritrans were looking to make an investment in Bradway. In Seratta I think it was the underlying investment, which Seratta was a 25-year old bicycle company in Saratoga, New York that was -- had used some SBA financing TO build its business, came across us because we were an SBIC, spent a significant time doing due diligence with them, and seemed like a growth oriented investment that would be helpful to Ameritrans and Elk, as we were trying to recapitalize the companies in the wake of the of settlement.

Q. What was the -- was this an investment that was reviewed by the Board of Directors?

A. I don't recall.

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Q. And were monies -- we previously saw that monies were advanced from Elk to Ameritrans, correct?

A. Today or last time? We have seen a lot --

Q. Today.

A. We looked at a lot of papers today. I apologize.

Q. Okay.

A. I am not -- I just want to be specific.

Q. What is the basis -- based upon -- if monies were advanced from Elk to Ameritrans, what is the basis for Ameritrans to make the investment into Bradway Capital in Ameritrans' name as opposed to Elk's name?

A. I don't know what -- I don't understand the question. I don't know --

Q. Would Elk advance --

A. I don't know.

Q. -- monies to Ameritrans for Ameritrans to make an investment in

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Bradway Capital GAB, LLC --

MR. HASHEM: Objection.

Foundation, mischaracterizes the record.

A. The business --

MR. HASHEM: Go ahead.

A. We were in the business of trying to save Elk, and Elk and Ameritrans were managed together as a unified company. So I don't know exactly what you are referring to with the name of the investment, but--

Q. Doesn't this letter state that the investment is being made by Ameritrans Capital Corporation?

A. It is an e-mail that says -- from our company. It doesn't -- there is no -- I guess let's look at the private placement memorandum to see who made the investment.

Q. Okay. On the -- okay. "Please accept this letter as verification of your company's investment of 200,000 in Bradway Capital GAB, LLC."

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A. Again, this was an SBA -- this was a star SBA investment. They had a big plaque outside the business swearing their allegiance to SBA and how they have sworn -- how they helped the company grow.

Q. The --

A. There were other SBICs I believe that participated as well in investing in Bradway Capital or Seratta, whatever the different iterations of the company.

Q. Was there a determination this time by you as to whether Elk was insolvent? This is in January 28, 2013.

A. I don't recall the date, no.

Q. Was there a determination by the board as to whether Elk was insolvent as of January 28, 2013?

MR. SEIDEL: Object to form.

A. I don't recall. Wasn't settlement agreement in effect at that time.

Q. Okay.

A. I believe it was. I am just trying to refresh my memory. So we were

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operating under the settlement agreement during that time.

Q. Under the settlement agreement, would the investment in Bradway be in Ameritrans' name or Elk's name?

A. I don't recall the structure of any investment being made, but I am sure we had no debt due during the time that the settlement agreement was in effect.

Q. Did you as an individual have any interest in Bradway Capital GAP, LLC?

A. I am sorry. Do you want say that question very clearly?

Q. Sure.

Did you have an investment in your name individually in Bradway Capital GAB, LLC?

A. Never.

Q. Did a company such as one -- Afinity have an investment in Bradway Capital GAB?

A. Never.

Q. Did any other company in which you had an interest in other than Elk or

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Ameritrans have an investment in Bradway Capital GAB, LLC?

MR. HASHEM: Objection to form.

A. Never.

Q. We can put this away and go to Exhibit 27.

(Exhibit 27 marked for identification.)

Q. The first page is an e-mail from Dominic Granito to Michael Feinsod and Silvia Mullens. It is dated March 28, 2013. "Wire was received into Elk Signature Bank from the sale of Impact in the amount of \$1,178,900 -- I'm sorry -- \$911.10; is that right?

A. That is what the e-mail says, purports to say.

Q. Do you have any reason to -- to doubt the accuracy of the e-mail of the sale of Elk's asset of Impact and depositing the money into Elk's bank account?

A. I -- I am looking at the e-mail

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and again it is different in form, but I don't -- I have no reason to doubt what it says.

Q. Okay. You transferred \$550,000 from Elk Signature Bank to AMTC Signature Bank. Do you see that information?

A. That is below the line that says -- when bills are paid that invoice for Elk was paid \$324,000 was paid

Q. Yes.

A. 204 for Katten.

Q. Right.

A. That was litigation related. Yes, I see what -- yes, it says we transferred \$550 --

Q. 550,000.

A. It looks like a period.

Q. Well, we will -- we will get to that. There are three zeros after what you -- what looks like a period; is that right?

A. There is a three zeros after what is a period.

Q. You paid the Pollack premium in

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the amount of \$156,191.94 out of AMCTC; is that correct?

A. That is what the e-mail says on that. Yes.

Q. Do you have any reason to doubt the accuracy of that information on that line, the Pollack payment?

A. Other than what I stated before.

Q. Does that refresh your recollection that Elk was advancing money to Ameritrans, and Ameritrans was using the money to pay the life settlement policy premium?

A. No.

Q. If you go --

A. How would it?

Q. All right. Just a yes or no if it refreshes your recollection or not.

A. It doesn't.

Q. If you go to the next page, it is a funds transfer request dated March 28, 2013 in the amount of 550,000 from Elk to Ameritrans for business development expenses, and with -- is that your

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signature on the page?

A. Yes, it appears to be.

Q. And March 28, 2013, what was the basis for Elk making advances to Ameritrans for business development expenses?

A. Normal course of business.

Q. We were operating under the settlement agreement. We were no longer an SBIC. We were working to recapitalize both companies.

Q. And had you -- in terms of the settlement agreement, who did you -- you say you are no longer an SBIC.

Who did you turn in your license to?

A. I don't recall specifically.

Q. Okay.

A. It would be -- I believe Diana Seaborn. I'm sorry. It might have been Arlene Embrey. Yes. You know what? We entered into a settlement agreement, and the signature -- I was a signatory. Arlene was a signatory, and I believe one

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of the first items in the settlement agreement was that we were turning in our Elk -- that we, Elk Associates finance committee was ceasing to be an SBIC in terms of that settlement, and Arlene signed that, and I signed that. There was also other, you know, paragraphs with the release. What else was there? Arlene you know -- they had done -- they had done a significant amount of work. We had a significant meeting. I believe Tom Morris might have actually been even involved with it as the head of liquidation. Sorry. I lost the question.

Q. Okay. In terms of the advance that was made by Elk to Ameritrans, were there any terms of repayment?

A. I don't recall.

Q. Any interest that Ameritrans would owe Elk?

A. I don't recall.

Q. Did the board authorize this advance of \$550,000 a month to Ameritrans?

A. I don't recall.

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Q. On page 3, we have March 28, 2013 \$125,000. That would be from Ameritrans -- actually it is from Elk to Ameritrans, and this is for D&O coverage; is that right?

A. That is what it says.

Q. Okay. Is that your signature on the client signature line?

A. It appears to be.

Q. March -- next page, March -- I am sorry. Before we go to the next page, do you have any reason to believe that the funds transfer request of March 28 in the amount of \$125,000 is inaccurate?

A. No.

Q. The March 27, 2013, there is a fund transfer request in the amount of \$156,194.51 from Ameritrans --

A. We are going back. I am sorry. We are bouncing around in time. I apologize. So the 27th is now after the 28th.

Q. It is the next page, page 4.

A. I -- they were going

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chronologically. I apologize. Got it.

Q. Okay. And this is a funds transfer request from Ameritrans to John Hancock Life Insurance policy again for Bernard Pollack, and is that your signature on the client signature line?

A. Yes, it appears to be.

Q. Okay. This is dated March 27, 2013 in the amount of \$156,000,194.51; is that right?

A. That is what it says.

Q. And that is the -- does this refresh your recollection -- I am sorry. Was Bernard Pollack an employee of the company of Ameritrans?

A. I don't recall.

Q. Does this refresh your recollection of Elk advancing funds to Ameritrans, and Ameritrans using the funds to pay life settlement premiums?

A. No, it doesn't.

Q. If he would could look at -- we are on Exhibit 27.

MR. WEINBERG: Can we go off

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the record for a minute, please.

THE VIDEOGRAPHER: The time is 10:31. We are going off the record. This is the end of media unit number 1.

(Recess taken.)

(Exhibit 28 marked for identification.)

THE VIDEOGRAPHER: The time is 10:44. We are back on the record. This is the beginning of media unit number 2.

Q. Mr. Feinsod, if you would refresh your exhibits.

A. One second. I have it. Thank you.

Q. Okay. Is Exhibit 28 the Bradway Capital GAB, LLC membership subscription agreement?

A. Yes.

Q. The first page says signed by MRF.

A. Correct.

Q. Who is MRF?

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A. Me.

Q. If we go to page -- if you could look at PDF page 7. Let's see.

A. 7.

Q. We are looking at PDF page 7. Are you there?

A. I am trying to get there. Got it. The entity signature page?

Q. Yes.

A. Right.

Q. Okay. And is that your signature?

A. It appears to be, yes.

Q. And did you sign that as the president of Ameritrans Capital Corporation?

A. Yes, I appear to have.

Q. Does this refresh your recollection that the investment in Bradway was by Ameritrans Capital Corporation, not Elk?

A. I don't recall.

Q. Okay. If we go to page 11, PDF page 11.

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A. Got it.

Q. There is a signature page dated November 19, 2012.

A. Okay.

Q. It was effective as of October 1, and then as of the 19th day of November 2012 the legal name of the member is Ameritrans Capital Corporation; is that correct?

A. That is when the document says.

Q. Do you have any reason to believe that the document is inaccurate?

A. In what way? No, it speaks for itself, the signature page.

Q. Is that your signature?

A. Yes.

Q. This is the member signature page for the subscription agreement that is marked as Exhibit 28, correct?

A. Page 11, yes. The member's signature page.

Q. And then the next page, page 12 is the subscribers who are entity's tax certification?

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A. Got it.

Q. And who is the entity that is signing the tax certification for the subscription agreement?

A. Ameritrans Capital Corporation.

Q. And is that your signature, Michael Feinstein as president?

A. Yes.

Q. Okay. We can put this away. No, there is another -- I'm sorry. Also on page 20, we have an entity signature page on PDF page 20 for a hundred thousand dollars.

What is the name of the entity on that PDF page 20?

A. The same exact page that you showed me above. It is a copy of the page that I talked about above.

Q. Okay.

A. It is an exact copy.

Q. It is --

A. You have two copies of the same agreement here apparently, counsel.

Q. Not the agreement, but the

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signature pages. Okay.

A. No, you have two -- you have shown me two copies. Your exhibit here is multiple copies of the same -- same exhibit. So to the extent you asked me to -- you have shown me the same pages over and over again.

Q. It was executed and duplicated. Okay. If we could put this away. We will go to the next be exhibit.

Before we go to this exhibit, Mr. Feinstein, have you ever --

A. It is Mr. Feinsod.

Q. I apologize, Mr. Feinsod. Have you ever reviewed the standard operating procedure for liquidation?

A. I did at one point I am sure. Yes. I -- I am assuming you are talking about the Small Business Associations SOP for Liquidation.

Q. Yes.

A. At one point I reviewed it, yes, years ago.

Q. Okay. Other than reviewing

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that from years ago, were you familiar with the chapter on receivership?

A. Not specifically.

Q. Okay. Do you know when an entity is receivership as to when the SBIC license is turned into the SBA?

A. In a typical receivership, yes. Our receivership was a negotiated receivership, so that is when it was turned over.

Q. In a typical receivership?

A. I have never been involved in a typical receivership?

Q. Do you know in what you call a typical receivership when the license is turned in?

A. No, I do not.

(Exhibit 29 marked for identification.)

Q. If we looked at Exhibit 29, is this the settlement agreement between SBA and Elk?

A. It is loading. This is the agreement --

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(Pause.)

A. I have it.

Q. Okay. Is this the settlement agreement between the SBA and Elk?

A. It is part of it.

Q. Okay. Well, what is the other

A. It is an incomplete copy. There are exhibits to it that seem to be missing.

Q. Okay. What exhibits is that that you claim are missing?

A. There are -- there are exhibits missing that were pertinent to this agreement.

Q. Okay. What exhibits do you claim are missing?

A. We can look online and find it, but there are exhibits that are missing.

Q. Okay.

A. I'm sorry. It is -- I am sorry. It is the agreement appointing SBA as permanent liquidating receiver of Elk.

Q. Okay.

A. So we entered into a specific

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receivership order as part of this. There might have been other agreements, but there was a receivership agreement attached to this that was part of this settlement agreement, an integral part of it.

Q. So this is titled "Settlement Agreement and Release."

A. Mutual release it is titled.

Q. What was the receivership agreement that was part of this settlement agreement and mutual release?

A. If you could pull it up, I could refresh my recollection, but I don't have it in front of me.

Q. Okay. Do you know what the terms -- was that the consent order of receivership?

A. I don't recall, but if you pull it up I would be happy to review it.

Q. Well, it is not -- besides the receivership agreement that you are referring to, what terms did it include?

A. I don't recall. I would be

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happy to review it if you refresh my memory.

Q. Well, what -- we are trying to understand what document or attachments you are referring to, what it was titled?

A. I believe I answered that there was one -- I described one exhibit that is missing already that appointed SBA as permanent liquidating receiver.

Q. Okay.

A. And I believe there may have been other documents. This was at the end of a significant litigation where the SBA had found -- the SBA decided that they wanted to settle with us in our meritorious lawsuit, and that was where the settlement agreement came from. So there are a lot of agreements. There are agreements from the settlement. There are documents that would probably be helpful in SBA's possession as far -- that led us up to this settlement agreement.

Q. But in the exhibit appointing the SBA as permanent receiver, can you

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recall what other exhibits there were to this agreement, this settlement agreement and mutual release?

A. Permanent liquidating receiver is the term I remember. I don't remember the other agreements. If you showed it to me, I could probably refresh my memory.

Q. If we look at paragraph 1 of the agreement, "Subject to the terms of this agreement, Elk shall tender to SBA and SBA shall accept \$7,900,00 (the payment) in full and final satisfaction of Elk's SBA debt."

Do you see that?

A. I do.

Q. Does that refresh your recollection that the amount of the settlement payment was to be \$7,900,000?

A. That refreshes my memory that at the time this was entered into the original settlement agreement was agreed upon at that time. It changed over time.

Q. What changes were those?

A. We had several negotiations with

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Arlene Embrey and Thomas Morris of the Office of Liquidation and were consistently in conversation with them between whenever this was signed until March when we went into receivership.

Q. Was there an extension of time to make the payment?

A. There was. I believe so, yes.

Q. And was the partial payment made of \$1.2 million?

A. I don't recall the exact amount.

Q. Okay. Was there a balance that was due and owing of the 7.9 million plus interest until the final payment was paid made?

A. I don't recall the amount.

Q. Was the final payment made by Elk to the SBA?

A. I don't recall. It does say in paragraph 3 where we surrendered our SBIC -- I am sorry. Elk's SBIC license was surrendered, and I guess refresh my memory the surrender letter looks like it might have been an exhibit. There is an

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Exhibit A. There is an Exhibit B. So there are significant exhibits here if you want to go through them.

Q. Where is Exhibit B to this agreement?

A. I don't have it. It is not attached. You haven't given it to me.

Q. Where is the reference to Exhibit B in the agreement?

A. Paragraph 4.

Q. Okay. On Exhibit A, was Exhibit A -- was a surrender letter executed?

A. I don't recall, but I would assume --

Q. You are assuming it was; is that right? Is that your testimony?

A. I believe -- I believe of it was, counselor.

Q. And who would the Exhibit A surrender letter have been turned over to?

A. Most likely Arlene Embrey.

Q. Okay.

A. I am sorry. Most likely it

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would have been given top Elk's attorneys to turn over.

Q. Okay. To turn over to Arlene Embrey?

A. Yes. Or to turn over to Arlene or I guess -- I guess Arlene was -- Arlene was the SBA representative at that point in our case versus Elk, and this was to settle our case versus SBA.

Q. Exhibit E makes reference to consent order receivership; is that right?

A. It seems to. It is mistitled I believe.

Q. Okay. And Exhibit C is A stipulation of dismissal; is that right?

A. That was where we dismissed our claims for arbitrary and capricious conduct by SBA against Elk. So yes, that was one of the other exhibits.

Q. Okay. And do you -- and on the last page of the document, page PDF 7, we have -- is that your signature?

A. The last page of the document. Page 6. Yes, it is.

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Q. And you're signing that as president -- you would sign that as president of Elk Associates Funding Corp.; is that correct?

A. That is what the document says, yes.

Q. Elk subsequently was placed in receivership; is that right?

A. Placed in, no. That is incorrect.

Q. What?

A. That's incorrect.

Q. Was the consent order of receivership filed, and the receivership was commenced; is that correct?

A. I believe so. Yes.

(Exhibit 30 marked for identification.)

Q. Okay. If you can refresh your exhibits. If you look at Exhibit 30.

Is Exhibit 30 bank balances for Elk and Ameritrans as of April 26, 2013?

A. I have never seen this. I don't know what it is.

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(Pause.)

Q. Sorry.

A. I have never seen this. I don't know what it is.

Q. You have never seen the Ameritrans daily bank account balances for Ameritrans Capital Corporation -- for Ameritrans and Elk?

A. I have never seen this one.

Q. The last page, report date of April 19, 2013?

A. No -- yes, I am looking at it. I apologize. I have never even it.

Q. Okay. In April of 2013, do you recall was that when Ameritrans -- Elk Associates -- Elk Associates Funding Corp. a receivership action was commenced?

A. I don't recall the date.

Q. Do you recall -- as of April -- in April of 2013, do you recall that the Elk Associates Funding Corp bank balance was \$17,400 -- I'm sorry. Let me get the exact amount -- 481.95?

A. What number are you looking at?

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I don't see -- I am looking at a PDF -- Exhibit 30.

Q. The last page, page 30.

A. Okay.

Q. There is a line that says "EAFC total."

A. Okay.

Q. And there are dates on top, and the last date on that page is May -- April 9, 2013, and the balance in the Elk bank accounts total \$17,481.95; is that right?

A. That is what it says, but I have never seen this report before.

Q. Does that refresh your recollection as to what the balance would have been in Elk's bank accounts by that time?

A. No. It does not.

Q. Okay. We can put that away. Do we have --

A. This looks like -- this is marked as an internal worksheet. This is not something I would have seen.

Q. Okay. We will take a minute,

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and I think we can wrap it up.

(Pause.)

THE VIDEOGRAPHER: Would you like to go off record.

MS. BILODEAU: Yes. The time is 11:04, and we are going off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is -- the time is 11:06, and we are back on the record.

MR. WEINBERG: Thank you, Mr. Feinsod.

THE WITNESS: Thank you.

EXAMINATION BY MR. SEIDEL:

Q. Good morning, Mr. Feinsod. We met before. I am Martin Seidel, and as you know I am the attorney for the independent director defendants.

I have a few questions for you today. It shouldn't take that long. I would like to start by talking about the intercompany expense allocations for a minute, and you gave some testimony about

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that over the last several days.

A. Okay.

Q. First just so we are on the same you page, this is an accounting entry, correct, the allocation --

A. Correct.

Q. -- between the parent and the sub?

A. Correct. That was an accounting entry.

Q. Now, you are not an accountant, right?

A. No, I am an attorney.

Q. But you certainly worked at both public and public companies. You were a lawyer at Paul Hastings. You did M&A work, right?

A. Yes.

Q. So you have some familiarity basically I am not saying as an accounting expert or even as an accountant, but you have some familiarity with GAAP, right?

A. Yes.

Q. And by GAAP, I mean generally

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accepted accounting principles, and I refer to it as GAAP you'll understand what I am talking about?

A. Yes.

Q. Turning to expense allocations when you consolidated the parent's sub relationship and there IS expenses shared between the parties, as there were at Elk and Ameritrans, correct?

A. Correct.

Q. GAAP requires the parties particularly where one -- where the subsidiary in this case reports on an independent basis to its regulator, and the parent reports on a consolidated basis to make some effort to allocate the expenses, right?

A. Correct.

Q. Now, let's pick an example, rent. Elk and Ameritrans occupied the same space, right.

A. Yes.

Q. It paid one rent, didn't it?

A. One monthly rent check, yes.

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Q. So it wasn't as if there was an Elk rent and an Ameritrans rent, right? There was just a rent?

A. Correct.

Q. And then each month or each quarter or each period you as management had an obligation to try and figure out a proper -- I mean you had a formula for this. I understand that. I am an attorney asking you because I know this was done by accounting staff, but there was a formula for allocating that one rent check between the two parties, correct?

A. Correct.

Q. So if you hadn't allocated it to Ameritrans, it would still be rent for Elk, right, and Elk itself would still pay monthly rent?

A. Correct.

Q. And if -- you look confused. This isn't hard stuff.

If -- conversely if Ameritrans paid the rent, it wouldn't be a different rent than if it is allocated between Elk

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and Ameritrans. It is still the rent, right?

A. Correct.

Q. And the employees' salary, your salary, Mr. Feinstein's salary, Ms. Mullens' salary, some other employees, Mr. Granito, those were shared because you did work for both companies, right?

A. Yes.

Q. And again your salary wouldn't change if there wasn't an allocation, right?

A. Correct.

Q. So it is not like Elk was loaning money to Ameritrans to pay your salary. It was paying you a salary and then allocating it between the two book entry accounts, right?

MR. WEINBERG: Objection.

A. Correct.

Q. And you said earlier today and I think you said this last time we met in October that generally the intercompany expense policy is something that goes back

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all the way to 1999, right?

A. Yes, at least.

Q. And it was the subject -- and it was something that was approved as a policy matter by the board, right?

A. It -- it was approved by policy matter by the board when we adopted the canning guidance given by the SBA.

Q. Okay. And I think there -- wasn't there also some sort of no action or consent agreement with either the SEC or the SBA on how to do this going way back in time?

MR. WEINBERG: Objection.

A. There is an -- sorry. We had had a multiple -- sorry. Ameritrans and Elk were parties to an exemptive order with SEC. Elk was a 40 Act company, Ameritrans was a 40 Act company. Both companies were required under SEC regulations to submit stand-alone financial statements to the SEC and to follow certain policies and procedures for how to deal with each other as wholly

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owned BBCs, and we had --

Q. And one of those is expense allocation, right?

A. And one one of those was expense allocations and --

Q. And that is something the board was aware of, and you followed it, right?

A. Yes, we had mirror image boards to protect that as an element to that.

Q. And in terms of the day-to-day, management actually executed the allocation process. By management I mean you and the accounting staff would execute whatever transfers or allocations or book entries were necessary, right?

A. Book entries would be done by the accounting department and the CFO.

Q. And then as a general matter you said this earlier, the Form 468s and 10Ks and 10Qs were reviewed by the audit committee and the full board and by doing so were -- they were -- and also by the accountants I might add, right?

A. Every -- yes, every 468 was

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reviewed by the external auditors --

Q. And --

A. -- for Elk.

Q. Right. And once a year they were audited?

A. And once a year they were audited.

Q. And that was what you referred to as the retroactive review by the board of the expense allocations?

MR. WEINBERG: Objection to form.

A. Correct.

Q. Now, Mr. Weinberg questioned you about a bunch of allocations, some transfers and allocations that were itemized as business development expenses.

Do you recall that?

A. From -- from October, yes, I do.

Q. And I think there is some earlier ones he asked you about in October. If you -- okay. Let's break -- let me withdraw that and try again because I think we are at a bit of cross

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purposes.

In October he showed you some general ledger entries that identified BD expenses, correct?

A. He showed me unsigned work papers that I -- that identified what might be business development expenses, but they were workers papers.

Q. And then he showed you some cash transfer authorizations that identified -- I wouldn't call it the re line, but the subject was business development expense in a couple of the exhibits today, right?

A. Right.

Q. I don't think he ever asked you this, but I am just curious what were Elk and Ameritrans' business development expenses typically? What does refer to?

A. The management of Elk -- the business of Ameritrans was managing Elk and running its day-to-day operations. Business development expenses quote, unquote were all the expenses of the

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company, and since 1995 when they were allocated based on an asset based formula. So I guess to -- to your question, historically the assets had been in the high 90s in the consolidated companies. So the consolidated expenses allocation would have been high 90s to Elk percentage-wise.

Q. Okay. And I think you started to answer where I was headed, and I want to just drill down on what I am talking about is what tort of sort of things went into the business -- what sort of expenses would be categorized as BD, and you -- you were at a law firm, so you know us as lawyers we have a different vision of what BD means, and I just want to understand.

A. I guess it was probably a loosely used term to run the business. The business -- the expense didn't have a ledger entry, you know, with the SBA GL but which might have been expenses about such as in this case rent or personnel or legal, maybe some -- what you call it,

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business development, traditional business development expenses, you know, client introductions and things like that, but they were day-to-day expenses for the company, for the consolidated companies.

Q. So would banker external advisors associated with acquisition of potential investments be a form of BD expenses under that rubric?

A. Yes, and to the extent legal -- to clarify it, like legal expenses in the case of the mergers, the attempted mergers and financings of Elk, those what were considered might fall under that business development expense.

Q. What about personnel cost? What kind of personnel expense would in the BD expense category?

A. Probably every employee I guess, and that was -- I believe it was at -- it was always done at the end of the quarter based on this asset based formula at the end of quarter that, you know, 94 percent of the assets and 99 percent of the

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business was conducted at Elk, and then Ameritrans operated to hold and carry on Elk. So --

Q. Okay. What about directors fees? Those were separately registered -- recorded, correct?

A. I believe so.

Q. Okay. So they wouldn't be a part of the BD expense then?

A. Part of them might have been because directors were serving as dual directors, so I don't recall exactly how.

Q. Okay. And one last accounting question, and I will move on from that. The other thing is certain types of expenses -- you are familiar with the consent of accrual accounting, right?

A. Yes.

Q. And Elk and Ameritrans were both -- used an accrual, not a cash accounting methodology, correct?

A. Correct. Once I got there.

Q. So, for example, if a salary was owed in a particular quarter but wasn't

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paid, and I am not satisfying that ever happened; I realize I am asking a hypothetical, but I want to get into something else. You would have to accrue that on the books, right? So if you owed -- if the company owed you 50,000 in a quarter but didn't pay, they still accrue it as an expense item, right?

A. Correct, under GAAP.

Q. And I realize that never happened because you received your salary on a regular basis, right? Just so we are clear. I am just saying this is a hypothetical. Is that a yes?

A. Yes, I received my salary on a regular basis.

Q. And you received it all the way through the time that you resigned from the company, correct?

A. Correct.

Q. Okay. We have seen evidence I know they showed you some documents on the October 28 portion of the deposition. There was a period where directors were

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not receiving their fees, correct, because the company was essentially in a financial strain, but they were still accruing as owed to them, correct?

A. Correct.

Q. All right. Let's move on.

There are a couple of other areas I would like to cover, and I know this has been a long process, so I want to get through this quickly with you.

I want to talk about the Columbus Nova transaction for a minute and sort of the run up to that. Columbus Nova was the only party that was out there looking at you guys, right?

A. Correct. We -- we ran a pretty competitive process. But -- what progressed into a pretty competitive bidding process.

Q. Right. Now, are you familiar from your -- digging back into your Paul Hastings days with the concept of a go shop?

A. Yes.

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Q. Did this CN deal have a go shop in it?

A. It had the opposite of one, an exclusivity agreement where --

Q. No shop?

A. A very tight no shop.

Q. A very tight no shop?

A. Right.

Q. So if you had, for example, entered into another deal during the exclusivity period, you would have owed -- you would have been in breach of the Columbus Nova agreement. Isn't that right?

A. Correct.

Q. Okay. But that didn't stop people from approaching you during that time period, did it?

A. No. The provisions allowed not a go shop, but if an unsolicited in bound came knocking on the door, we were -- we were permitted to engage in discussions with them. There was a complicated notice procedure under the document --

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under the stock purchase agreement, but we were permitted.

Q. Okay. And there was always a fiduciary out. In other words, if somebody else came along with a better deal, and you -- you and the board considered it and reached certain conclusions, and I am oversimplifying this grossly, and I know there are pages in the agreement, you had a right to blow out the deal?

A. We had a heavily negotiated right to get out of the deal and a heavily technical and analyzed process that would protect the shareholders and give us the ability to maximize value.

Q. Okay.

A. It was a superior offer.

Q. A superior offer, and just so we are clear a superior offer would have been in the agreement capital S, capital O offer. It is a defined term, right?

A. Heavily negotiated, yes.

Q. Not just we got

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better -- somebody offered us more money or something else. So, for instance, if somebody came in and offered you double what CN was offering on a per share basis but the board and you and your advisors in your judgment determined that the execution risk -- and if I use that term you know what I am talking about, right?

A. Correct.

Q. -- that the execution risk WAS so high on the deal that you might not be able to get it through or the regulatory execution risk was so high that you might never get the SBA to approval for it, you didn't have to drop CN for that deal, right?

A. Correct.

Q. That is not a superior offer in the capital S, capital O meaning of the term?

A. Correct. It was a heavily defined term.

Q. And that ment that you -- and I am going to focus -- I know the board has

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a role in this, but I want to focus on you because you are here today, on the front lines as a deal guy it was important for you to look at the execution risk and the regulatory risk of any proposal that came in and make sure that you weren't walking the company into something that wasn't going to fly, right?

A. That -- yes, the likelihood of a transaction that would come to fruition or close was my job.

Q. I didn't ask you this, but just out of curiosity what was it that -- I mean I saw -- you know, I think when I was talking -- looking through this I saw 15, 16, 17 potential parties including people as big as GSO, which is Blackstone.

A. Right.

Q. What was it that made this company so attractive given that Mr. Weinberg keeps talking about how the portfolio was lucrative money?

A. The corporate structure, the way it had been structured, the permanency of

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the license, of the SBIC license, the evergreen agreement. Most SBIC for last few years receive seven-year licenses. Elk had a permanent license. It was one of five remaining evergreen licenses in the country at this point. I believe the other ones had been -- I believe they had been closed down, but there was a concerted -- this was a unique type of SBIC license, and to your questioning, as the word got out of the Elk/Ameritrans structure and more people found out about it, we met with some of the largest organizations in New York ranging from the Soros Asset Management to Arlon Asset Management to GSO in the final days of shopping the company. So we -- we were also represented by Moelis & Company. Moelis & Company investigated purchasing the company. The proxy details I think -- I would think it was in the 20s the number of sophisticated parties that did a deep dive into Elk, and including Columbus Nova did a deep dive into Elk and

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found that it was worth substantially more than -- it had the potential to be worth substantially more if it was grown properly.

Q. And just to kind of put a bow around what you just testified to, when you say the corporate structure, it is an evergreen SBIC license sitting inside a BDC that is a wholly owned subsidiary of a public BDC, right?

A. Correct, and at that time there was no other entity like it.

Q. Okay. So a lot of these entities were really interested essentially in buying the structure more than the company, right?

A. That would be a broad generalization, but yes. The structure -- the structural viability of it, yes, that it was a powerful structure.

Q. Okay. And -- but that in and of itself, a buyer who is just basically coming in and buying the structure poses a form of execution risk of its he own,

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doesn't it?

A. Absolutely. We had several buyers that looked at it like that.

Q. I mean the simplest one is SBA approval because there is no continuity of management. There is no continuity of programmatic policy?

A. Correct.

Q. If somebody just buys the license, it is a whole new ballgame. It is new applicants. There is some risk to that, right?

A. There is substantial risk.

Q. And that is one of the reasons CN in your view was a better deal because continuity of program and management took off the table the regulatory risk of somebody just buying a license, right?

A. I would just enhance that by saying continuity of management and enhancement of management that we were getting from Columbus Nova in the space we were in was second to none.

Q. All right. And, you know, you

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mentioned something about this evergreen license, and I know you talked about that a little bit before. That in and of it was a problem in the CN approval, wasn't it? Going to the --

A. Yes.

Q. In other words, that was something that you saw behind the scenes was an impediment of getting SBA to buy into a -- a transaction that everybody believed should be a no brainer and was going to save the company, right?

MR. WEINBERG: Objection to the form.

A. Correct. At the beginning it seemed -- at the beginning of the review process Paul Salgado and Fonda seemed a hundred percent behind the transaction. They were happy about the capital impairment cure. They were happy about the investment into the company which would eliminate the due to parent at that point, and they were all for it and even had given us confirmation that they were

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recommending it to the investment committee -- recommending approval of the transaction as early as maybe May or June that they were recommending it, and he would thought that we were -- you know, achieved the right purpose.

Q. And you let the board know about that, right? You let them --

A. Exhaustively.

Q. Okay. But then there came a point where -- where the management ownership diversity issue came up, right, in the summer. It started getting flagged?

A. Correct. It was raised. It didn't feel ingenious. It felt arbitrary and capricious in terms of how it was being held. It was a summer when there was no progress made when there should have been progress.

You mentioned that my background was in mergers and acquisitions. I have been involved in the transfer of at least a hundred federal licenses regarding

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cellular and cable assets and have never had one -- have never seen one turned down. So in the normal course we had expected this to be reviewed and transferred, and when MOD came -- when MOD came up our lawyers gave us guidance that it was a manufactured -- it wasn't a real issue. And I believe our law firm delivered a memo to SBA explaining our position, and while they continued to act somewhat arbitrarily and capriciously husbandly in not giving guidance and not explaining to us what was wrong with that perception of MOD I guess on December 22 probably on the last night of the business year at 5 o'clock I was e-mailed a letter citing MOD as the issue and some other, you know, somewhat arbitrarily claims. Sorry to ramble.

Q. And during the course of the summer, I want to back up, and this started in July and went through December, and I don't want to go through the exhaustive process you went through,

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however during that time period you made efforts to work with Columbus Nova to restructure the deal in order to satisfy the MOD requirement even though you thought it was -- you call it arbitrary, but I would have said pretextural, right?

MR. WEINBERG: ObjectION.

A. I would agree. It was pretextural, and it was -- it was a false flag I guess would be the best. We were consistently banging our heads against the wall and got no guidance on what might help with the issue, even maybe misguidance. Maybe -- internally Paul Salgado was trying to get the transaction done for us is what we believed at that point through the summer.

Q. And you -- to my point, the question I asked is you made efforts with Columbus Nova to restructure the deal to get around the transaction to issue, right?

A. I believe we amended the transaction --

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Q. And the board --

A. -- substantially.

Q. And the board made efforts to get around the MOD issue, correct?

A. That's correct.

Q. And that was -- and that was the issue that was discussed over and over again with the board as to what was the SBA's concern here together with this fact that there was something hiding behind it, which was we want to kill the license?

MR. WEINBERG: Objection to the form.

Q. That is what you told them, right?

A. Yes.

Q. You didn't just tell them there was an MOD issue. You told them there was an MOD, but it was pretext to kill the license, right?

MR. WEINBERG: Objection to form.

A. That was what was said. To use your term it seemed like pretextural to

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keep us from transferring the license and prolong the process as long as possible. Questions that could have been answered in hours were answered in weeks in terms of responses.

Q. And did you discuss with the board any other concerns besides those two sort of twin concerns that the SBA had?

A. Probably among others the black hole of information. That there was an intangible, and, you know, I will refer to this what I refer to it as arbitrary. It just didn't make sense. Nothing was following a linear path in a regulated organization. To the extent that we were he following -- looking at SOPs and trying to understand the review process and provide information, nothing was done. According to SOP, this is standard operating procedure. You know, this was a -- there was a process here, and SBA threw it out the window, and actually I think they even used the term relicensing at some point. So what was supposed to be

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a change of control morphed into a relicensing process without guidance, without SOP, without any -- any appropriate conduct by SBA in my opinion.

Q. Thank you. So.

One other -- another area I want to turn to is Mr. Indick. Mr. Indick was on your board as a designee of his PE found Pride Capital, right?

A. Yes. Yes, he came on when they made a substantial investment.

Q. And his director fees were in fact paid to Pride Capital, right?

A. I don't recall, but that would make sense.

Q. Okay. And there came a time when Pride closed and went into the mode of essentially monetizing its investments and returning money to shareholders, correct?

A. Correct. They had one investment that they were focusing on, and they were -- they were going in different directions.

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Q. And at that point Mr. Indick wanted to money advertise his -- I shouldn't say his -- Pride's investment in Ameritrans, right?

A. Correct.

Q. And that would have been in late 2010 or early 2011. In fact, you -- your fund Infinity purchased his interest, correct?

A. Correct.

Q. Let me rephrase it -- withdraw and rephrase it. Infinity purchased Pride's interests, correct?

A. Infinity Capital Partners purchased Pride's interest, and I just note I brought to the board, and we completed the transaction.

Q. And at that point Mr. Indick indicated to you that he wished to step off the board, correct?

A. Yes, that sounds right.

Q. So that would have been in early 2011?

A. I believe it would correspond

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with shortly after he sold his investment.

Q. And you asked him not to step down until the Columbus Nova deal was closed because you were close on that, and there was going to be a board change anyway?

A. I don't recall. I think that he was helpful in -- he was helpful when we were out marketing I believe. I don't remember the dates exactly, but the optics seemed better to have continuity at the board level.

Q. Got it. But then -- so the deal gets signed in April. You have a shareholder meeting in June to approve it. The proxy goes to the shareholders?

A. Right.

Q. And after that point Mr. Indick effectively was off the board although he doesn't formally resign until September; isn't that right?

MR. WEINBERG: Objection.

A. That sounds about correct timewise.

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Q. Got it. Give me a minute.

(Pause.)

Q. Just a couple of other points. We went through a number of sales of assets in 2012 and 2013 today with Mr. Weinberg, correct?

A. Correct.

Q. Okay. You recall the sale of something called the Affinity Group?

A. Not specifically, no.

Q. Okay. Did -- were any of the proceeds from the sale of Affinity Group paid over to Mr. Laird?

MR. WEINBERG: Objection to form.

A. Definitively not.

Q. I --

A. I'm sorry.

Q. Sorry. The answer is no. It will be faster -- I like definitively for my client's sake, but no is your answer, right?

A. No. No. I -- no.

Q. This is going to be repetitive.

FEINSOD

I apologize.

A. Sorry. I was caught off guard.

Q. The same would be true with respect to Mr. Wolpert. Nothing was paid to him out the Affinity Group asset sale, correct?

MR. WEINBERG: Objection to form.

A. Correct.

Q. Similarly Howard Sommer. Nothing was paid to him?

MR. WEINBERG: Objection to the form.

A. Correct.

Q. And Elliott Singer, nothing was paid to him?

MR. WEINBERG: Objection to form.

A. Correct.

Q. Peter Boockvar, the same thing. Nothing was paid to him?

A. Correct.

MR. WEINBERG: Objection to the form.

FEINSOD

Q. Plainly Mr. Indick was already off the board, so nothing was paid to him, correct?

A. Correct.

Q. And then the Mirimax Film, LLC asset, the proceeds from the sale of that nothing was directed to Mr. Laird, correct?

MR. WEINBERG: Objection to the form.

A. Correct.

Q. Nothing was paid to Mr. Wolpert?

A. Correct.

MR. WEINBERG: Objection to form.

Q. And nothing was paid to Mr. Summer, correct?

MR. WEINBERG: Objection to the form.

A. Correct.

Q. And nothing was paid to Mr. Singer?

MR. WEINBERG: Objection to the form.

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A. That would be correct.

Q. And the same would be true with respect to Mr. Boockvar?

MR. WEINBERG: Objection to the form.

A. That would be correct.

Q. And again the same would be true with respect to Mr. Indick?

MR. WEINBERG: Objection to the form.

A. Correct.

Q. Okay. I am going to ask -- I am going to do this for everybody. Just tell me if I am wrong for any one individual, but for Center Plate did any independent directors receive any money from the proceeds of the sale of Center Plate?

MR. WEINBERG: Objection to the form.

A. No. They did not.

Q. Would the same be true with respect to the Synscort Incorporated?

MR. WEINBERG: Objection to the form.

FEINSOD

A. The same would be correct.

Q. And the same for Fairway Acquisition Group, right?

A. Correct.

MR. WEINBERG: Objection to the form.

Q. And the same with Sheerer Foods, correct?

MR. WEINBERG: Objection to the form.

A. Correct.

Q. And the same for Hudson Products Holdings, correct?

MR. WEINBERG: Objection to the form.

A. Correct.

Q. And the same with Sterling Info Systems, correct?

MR. WEINBERG: Objection to the form.

A. Correct.

Q. The same with respect to the Sealmax, correct?

MR. WEINBERG: Objection to to

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the form.

A. Correct.

Q. And the same with respect to Impact Confections, correct?

MR. WEINBERG: Objection to the form.

A. Correct.

Q. And then I am going try to speed this up by lumping them together, but to the extent that life settlement policies were paid -- were sold off, none of the proceeds from those policies sales were paid over to any of the independent directors, correct?

MR. WEINBERG: Objection to the form.

A. Correct.

Q. Okay. And in fact to the extent sales of assets were done in 2012 -- after February of 2012, which I think all of these were done in March, April, later in the fall, they were done either for the purpose of paying off the Columbus Nova and Etra notes, correct? Those are

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the primary reason --

A. I believe so.

Q. Or to pay the SBA settlement in the fall?

MR. WEINBERG: Objection to the form.

A. I believe so.

Q. Okay. And to the extent that more money -- that -- rough justice that is 4 million and 1.2 million, right?

MR. WEINBERG: Objection to the form.

Q. Call it \$5.7 million?

A. Roughly. I haven't been keeping track. I apologize.

Q. No. I am talking about -- I am coming from the other direction. The Etra note was 3 million. The Columbus Nova note was 1.5. Both of those were discounted down -- negotiated down at the time of settlement with them and then 1.2 million to the SBA. That is where I am getting roughly 5 and a half to 5?

A. Correct. That sounds correct.

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Q. Okay. To the extent that the various sales resulted in proceeds above that, those were used to pay Elk and Ameritrans operating expenses during that time period, including business development expenses, correct?

MR. WEINBERG: Objection to the form.

A. Correct.

Q. Okay.

MR. SEIDEL: Can we take a short break, and I would like to have five minutes in a breakout room with my colleague, Ms. Larsen.

THE VIDEOGRAPHER: The time is 11:41, and we are going off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 11:53, and we are back on the record.

MR. HASHEM: Could we pull up Exhibit A, please. And then in the meantime, Mr. Feinsod, I am going to ask you a few questions, and

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hopefully we can wrap this up.

THE WITNESS: Just bear with me -- I need to log back into Veritext. It timed out. Sorry.

MR. WEINBERG: Sorry, ray.

Where would the exhibit be displayed?

MR. HASHEM: Mr. Feinsod, is trying to log into Veritext, but it should be in the marked exhibits folder that we have been using.

MR. WEINBERG: Okay.

MR. HASHEM: It is Exhibit

31.

(Exhibit 31 marked for identification.)

EXAMINATION BY MR. HASHEM:

Q. Exhibit 31, before we turn to it, let me ask a couple of questions. So Elk was founded or started, created in 1980; is that correct?

A. I believe it was '79.

Q. And it was licensed by SBA around 1979 or 1980?

A. Correct.

FEINSOD

Q. And around 1999, was Ameritrans created to be a holding company for Elk?

A. Yes.

Q. And in 1999, there was a process by which Elk -- Ameritrans bought all of the outstanding stock of Elk; is that correct?

A. Correct. It was a single share, which merged, and it was a share exchange.

Q. And so Elk became a wholly-owned subsidiary with no other shareholders other than Ameritrans?

A. Correct.

Q. Now, was it your understanding -- so let's turn to Exhibit 31. It is a letter from Strasburg & Bell dated November 25, 1998 to the U.S. Securities and Exchange Commission. Please take a look at maybe the first page and then the attached document, which starts at page 5 of the PDF, and let me know when you have had a chance to look at it.

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(Pause.)

Q. Do you recognize this document?

A. Yes.

Q. What is it?

A. This was the application for exemptive relief that forms the basis for the exemptive order for Elk and Ameritrans.

Q. What do you mean by exemptive relief?

A. As I mentioned before, Elk and Ameritrans were both known as business development companies, which requires them each to file under the 34 Act with the SEC on a regular basis. Since Elk was going to be a hundred percent owned -- wholly-owned subsidiary of Ameritrans, and there are certain -- Elk applied -- Ameritrans and Elk applied for a reorganization, which would allow Ameritrans to file consolidated financial statements. That was the main gist of the exemptive order.

The exemptive order also applied

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to different sections regarding operations between business development companies and exemptive relief that Ameritrans might need to operate as this -- under the exemptive order, and I also believe looking at the index, which is page 7, it details other important precedents, which I believe most of them were evergreen SBICs. So --

Q. What is an evergreen SBIC?

A. A typical SBIC -- an Everygreen SBIC is one that is licensed -- that is given a perpetual license meaning it is allowed to operate in perpetuity as opposed to the typical SBIC now is licensed for seven years. This was not by regulation but by internal decision. The SBIC -- the SBA has made certain decisions to only license SBICs for seven years, and I believe they publish that on their website that they will no longer license perpetual SBICs.

Q. Let me --

A. So you have a seven -- sorry.

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Q. Go ahead.

A. It is important because you have a seven year life the -- SBICs that are issued today have a seven-year life and are given one chance to invest their money, and then it is -- the structure generally goes into runoff. The value -- the inherent value, which we alluded to in the permanent license or the evergreen license is the ability to reinvest proceeds from other investments.

Q. Let me ask you to turn to page 13, please. So if you look at -- I lost my place. So if we look at page 13 of the document, it -- the first -- I guess the second paragraph says, "In addition since Ameritrans will operate Elk as a wholly-owned subsidiary, the acquisition of the securities of Elk, any loans or advances made to Elk by Ameritrans or any other transfer from Ameritrans to Elk will be exempt from the prohibitions of Section 12D1A and C by virtue of Rule 60A1."

Then it says, "Exemption

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requests. In general the purpose of Section 12D(1) is to prohibit investment companies from permitting control of management fees."

Looking at this section, do you recall whether Elk or Ameritrans -- Ameritrans had sought permission from the SBA to be able to make loans and advances to Elk?

A. Advances -- not so much loans but advances I guess? I am not following the question. I apologize, Ray.

Q. Let's strike that question.

MR. HAMESH: Can we -- can you mark as Exhibit B, please.

Q. I'm sorry, Mr. Feinsod. I apologize.

A. No problem.

Q. Staying on page 15 of Exhibit 31, if you look down where it says --

A. Hold on one second. I have to go back to that. So page 15 of Exhibit 31. 15 of the document. Okay. I am there.

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Q. So it says under "Exemption requested, subject to condition 6 set forth in Section 5 of this application Ameritrans and Elk request that the commission render an order exempting from the sections the provisions of section 17 A and 17 Act one translation solely between Ameritrans and Elk with respect to purchase and sale of securities or other property and the borrowing of money or other property."

Is it your understanding that Ameritrans had requested from the SEC permission to exempt transactions between Ameritrans and Elk with respect to purchase and sale of securities or other property and the borrowing of money?

MR. WEINBERG: Objection to form.

A. Yes, and that it was granted.

Q. So is it your understanding that the -- that the exemptive order had sought permission from the SEC to allow Ameritrans to borrow money or make

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advances or purchase and sell securities with Elk?

MR. WEINBERG: Objection to the form.

A. Yes.

MR. HAMESH: If we could pull up exhibit 32, please, which is what I have marked Exhibit B.

(Exhibit 32 marked for identification.)

Q. It is still loading for me. So give me a moment.

(Pause.)

Q. Mr. Feinsod, for the record, Exhibit B is a letter dated November 29, 1999 from Strausberg & Bell to the U.S. Securities and Exchange Commission with an attachment.

Mr. Feinsod, do you recognize this document?

A. Yes.

Q. What is this document?

A. I believe it is part two of the application for exemptive relief. It is

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the first amendment that was filed. So --

Q. If I could draw your attention to page 10.

A. Got it.

Q. Okay. So the section says, "Proposed operations as one company." Do you see this section heading?

A. Yes.

Q. And it says "A, futue operations of Ameritrans and Elk." Do you understand this part of application to be describing to the SEC the proposed operations of Elk and Ameritrans?

A. Yes.

Q. And was it your understanding that in the exemptive or application Ameritrans proposed that Elk and Ameritrans would be operated as a single company?

MR. WEINBERG: Objection to form.

A. Yes, and this was negotiated with the SBA from my understanding.

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Q. What is your knowledge of what negotiations were conducted with the SBA?

A. That there were significant negotiations between the SBA and Elk with respect to the formation of Ameritrans, the -- the continued operation of Elk and the exemptive order that was needed for Ameritrans to be a public company.

Q. Now, if you look at the paragraph right under A on page 10 it says "As currently contemplated by applicant after the share exchange, the following type of transactions may arise in the future involving Ameritrans, its subsidiary Elk, and one or more future subsidiaries."

Do you see that?

A. I do.

Q. And if we go down to 3, it says "The subsidiaries might from time to time make loans or other advancement" -- "advances to Ameritrans or to each other subject to the requirements of the 1958 Act and regulations. Such

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loans and advances might be made for the purpose of providing funds to Ameritrans with which to pay dividends, to maintain its qualifications as a regulated investment company or to make investments for its own account or to pay operating expenses. The subsidiaries will not purchase or otherwise acquire any of the capital or stock in Ameritrans."

Do you understand the exemptive order to have or -- sorry. We were talking about the application. Did you understand that the application -- in the application Ameritrans had requested permission from SBA to allow Elk to make advances for -- to Ameritrans?

MR. WEINBERG: Objections to the form, and the document speaks for itself. It is subject --

A. Yes.

MR. WEINBERG: -- to the requirements of the 1958 Act and regulation.

Q. I am asking, Mr. Feinsod, about

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your understanding of what Elk had requested from -- sorry -- your understanding of what Ameritrans had requested from the SBA -- from the SEC?

A. My understanding was that --
MR. WEINBERG: Objection to form.

A. I'm sorry. Can I start?

MR. WEINBERG: I objected to the form. If the court reporter has it, please answer the question.

A. My understanding of this paragraph is that this is specifically because transactions between Ameritrans and Elk may have been considered improper without this exemptive relief. As two BDCs one being wholly owned, that this was respect to track with respect to 1958 Act and Regulations the chart of accounts managed by an SBIC and then as the paragraph tracks the language about how loans loans and advances might be made to a parent company, and on the contra there is another regulation within the chart of

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accounts which would show loans and advances going the other way, but this was an understanding that Ameritrans was the public property of Elk-- of doing the business of Elk.

So to be as clear as possible, this had to have been heavily negotiated because Ameritrans and Elk could not have conducted any business with each other without this.

Q. Let me step back for a second. Do you recall when you first invested -- did you make an investment in Ameritrans before you came to work for Ameritrans?

A. No, that is not possible. You can only invest in Ameritrans. I'm sorry you can only invest in Ameritrans, not Elk.

Q. And when did you first encounter Ameritrans?

A. In 2002, I found it after it broke off a merger agreement with Medallion Financial, which was another

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publically traded SBIC with a drop down BDC specializing in the taxicab medallion industry.

Q. And what -- did you eventually make an investment in Ameritrans?

A. A significant investment. Between 2002 and 2006 I believe I acquired 99.9 percent of the company.

Q. And what was the reason for that?

A. I thought that the value -- the structural value of the company was powerful, meaning that the SBIC license within an SBIC properly capitalized and properly managed had the likelihood to become a very successful finance company.

Q. And so is it fair to say that one of the things that initially persuaded you to invest in Elk and Ameritrans was the structure of the Ameritrans holding company and the Elk subsidiary?

A. It absolutely was, and that it was a publically traded company and subject to -- while it was an SBIC,

1 FEINSOD
2 subject to rules and regulations, and in
3 the normal course of business such license
4 could be traded or merged, and the
5 corporate subsidiary had an approved
6 merger at one point with Medallion
7 Financial, which is how I found it. So
8 in a process that was run not arbitrarily,
9 it appeared that Elk could either
10 recapitalize itself or merge into another
11 entity and grow -- and grow that way. So
12 it was a belief in the -- in the total
13 existence of the package, which was both
14 the SEC exemptive order and the SBIC
15 license and Ameritrans structure.
16 Q. I am going to ask you --
17 MR. HASHEM: Could you please
18 mark Exhibit C or what I have marked
19 as Exhibit C what will become Exhibit
20 33.
21 (Exhibit 33 marked for
22 identification.)
23 A. Are we waiting on me or are we
24 waiting for the exhibit to be loaded?
25 Q. If you could just refresh, you

1 FEINSOD
2 should see it.
3 A. It just came up. Thank you.
4 Exhibit C order granted. Okay.
5 Q. Okay. If you look at page
6 is -- first have you seen this document
7 before?
8 A. Yes.
9 Q. What is this document?
10 A. This is the order granting a
11 relief requested in the other two -- the
12 first two -- the document and the
13 amendment that we discussed.
14 Q. If you look at the last
15 paragraph on the page it says, "Elk
16 Associates Funding Corporation, et al.
17 filed an application on November 27, 1998
18 and amended the application on November
19 30, 1999."
20 Do you understand that to refer
21 to the two documents we just reviewed?
22 A. Yes, and that Elk was the bigger
23 company. Sorry.
24 Q. And if you look at the last
25 sentence of this paragraph the order also

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2 would permit the two companies and any
3 additional wholly-owned BDC subsidiaries
4 of the parent established in the future to
5 engage in certain transactions that
6 otherwise would be permitted with the
7 parent and its BDC subsidiaries for one
8 another company and adhere to modified
9 assets reporting requirement and file
10 certain reports on a consolidated basis."
11 Do you see that?
12 A. I do.
13 Q. Is it your understanding that
14 the SEC granted the relief in the
15 applications we discussed?
16 MR. WEINBERG: Objection to
17 the form. The document speaks for
18 itself.
19 A. This is signed by the -- by
20 someone at the SEC. It seems to be the
21 order granting it, and I guess that
22 everything was approved by SBA before it
23 was submitted to SEC. So the SBA had
24 signed off on all these documents prior.
25 Q. So you mentioned you had seen

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2 this document before.
3 Were you aware of the exemptive
4 order at the time you were in -- at the
5 time you became an investor in Elk and
6 Ameritrans?
7 A. I was mildly familiar with it as
8 I became more -- I became more familiar
9 with it over time, and it was a
10 significant factor in making my investment
11 in Ameritrans.
12 Q. And were you aware of it at the
13 time that you became a -- a board member?
14 A. Yes.
15 Q. And the exemptive order -- you
16 mentioned earlier that there was a company
17 Medallion Financial Corp.; is that
18 correct?
19 A. Correct.
20 Q. Were you aware that Medallion
21 Financial Corp. also had an exemptive
22 order from the SEC?
23 A. Yes.
24 Q. And was that something notable
25 about Medallion Financial Corp. that in

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your view the fact that Elk -- Ameritrans having an exemptive order was something that made it more attractive as an investment?

A. Yes. Medallion Financial had successfully leveraged a similar structure to grow in size to be probably four to five times the size of Ameritrans by the time I got there between 1999 and when I formed the company in '02, '03.

Q. So at some point -- you can take this exhibit away.

At some point you joined the board of Ameritrans; is that correct?

A. Yes, roughly 200, 2005.

Q. Why did you join the board of Ameritrans?

A. I had made a significant investment in the company and was concerned that the company wasn't generating a profit.

Q. What was the basis for your concern?

A. It seemed that management was

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understaffed, that it was a thin management team and adding more staff would be helpful.

Q. And who was on the management team at the time you joined the company?

A. The management team when I joined was Gary Granoff, Steven Etra, Lee Forlenza, Owen Walker.

Q. Now, is it correct that during your time as a board member you observed that the management team was not -- this is in 2006, with Gary Granoff and Lee Forlenza, was not operating the company in your opinion effectively?

A. Yes, that was any opinion.

Q. Why -- what led you to that opinion?

A. A variety of factors from their dedication to -- dedication of the amount of time that they spent working at the company both Lee -- all -- each of those employees held other salaried positions during that time outside of Elk/Ameritrans. They were either lawyers

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or working in their own businesses. The law firm of Granoff Walker & Forlenza was the single largest vendor to Elk in terms of providing legal services that were charged to the borrowers for taxi -- primarily for taxicab loans, and I felt that the company's focus on taxicab loans at the time was self-serving for the law firm and poor business judgment as an asset class to be in. So sometime in 2007 I believe we made a decision to try an market the Medallion portfolio, and we sold the taxicab medallion portfolio during the summer of 2008 I believe and then began -- sorry.

Q. Let me interrupt you there for a second.

So you mentioned the law firm of Granoff Walker & Forlenza. Granoff Walker & Forlenza at that time were in the management of Elk as well?

A. Correct. They held themselves out as taxicab attorneys and SBA attorneys as well handling representation of other

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SBICs in front of SBA, specifically taxicab medallions.

Q. And you mentioned that you sold the taxicab medallion portfolio. What was the reason?

A. The taxicab medallion business in New York had become overvalued on a financial level and in my opinion corrupt. There were too many people pushing up the values of medallions to unsustainable levels, and it was just not -- it was an improper place to be lending money on taxicab medallions, and it became -- I believe it became -- after we sold there has been a significant collapse in the market and some exposure of organized crime participating in the taxicab market.

Q. So did you at some point become president of Ameritrans?

A. When I joined the company, I joined as president I believe, and I became CEO after the medallion sale.

Q. And what time -- about what time did you become CEO?

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A. I believe the beginning of 2008. I'm sorry. It would be 2009 when I was CEO after the closing of the transaction.

Q. And when you refer to the transaction, you are referring to the sale of the taxicab portfolio; is that correct?

A. Yes. We paid down all our outstanding debt with all -- all the outstanding bank debt and had -- became a non-bank borrower at that point.

Q. I want to talk a little bit about that bank debt. So prior to 2009 when Elk had a taxicab portfolio, about how big was its portfolio?

A. I believe it peaked at \$60 million, somewhere around there.

Q. And you mentioned earlier that, you know, out of combined company Ameritrans and Elk 90 -- what did you say, 95 to 99 percent of the assets were held, right?

A. Yes. And to follow-up on that, it was probably 90 percent of those assets were medallion assets. So --

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Q. So is it fair to say that the operational -- the work of --

MR. HAMESH: Strike the question.

Q. You mentioned that there was an expense allocation of expenses -- when a shared expense like rent was paid, it was allocated between the companies; is that correct?

A. Correct.

Q. And you mentioned that the formula to your recollection was based on the amount of assets that the companies had; is that correct?

A. Yes, retroactively at the end of each quarter.

Q. And at the time when 95 to 99 percent of the assets were Elk's assets, the allocation -- is it fair to say the allocation allocated almost all of the shared expenses to Elk?

MR. WEINBERG: Objection to the form.

A. It would be fair to say that 95

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to 99 percent of the expenses were Elk's.

Q. So in 2009, you sold the taxicab medallion -- in 2008 you sold the taxicab medallion portfolio; is that correct?

A. Correct.

Q. That caused Elk's assets to shrink dramatically, right?

A. Overnight.

Q. Now, is it true that this reduced Elk's revenue?

A. Yes, it reduced Elk's revenue?

Q. Why?

A. Because we sold a significant amount of assets that were revenue-producing assets. The -- if I remember, I would guess it was a 7 percent yield when we sold the portfolio. So roughly 40 million plus in assets. I don't remember the exact amount, but it was approximately 40 million in taxi assets that were sold. So that would be roughly 3 million in revenue that would just disappear from that, but our corresponding bank borrowings at 5 percent

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also disappeared at the same time. So it was a leveraged business, and while revenue was declining our interest expense went down dramatically as well.

Q. So now you -- the plan wasn't for Elk to just have a small portfolio; is that correct?

A. Correct. The plan was, you know -- again, the taxicab business was frothy and filled with questionable characters, and the plan was to move into what we called senior secured loans. After doing significant research, we determined that there was a world of SBIC eligible loans that Elk was -- that were open to Elk to invest in that had high collateral quality, high liquidity, and had a much better profile than the taxicab medallion business ever would, and we made a decision, and we called that the corporate loan strategy and decided to move towards that.

Q. So your strategy, when you became CEO, the company's strategy was to

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pivot towards this corporate loan strategy; is that correct?

A. Yes, of lending to well-capitalized companies at the top of the capital structure. Meaning we would be the most senior lender, and there would be significant capital or equity beneath us. He would be giving up yield for security of principal.

Q. And did you make any loans during this period pursuant to that strategy?

A. Yes. I think we originated over \$30 million in loans in this strategy and presented it to SBA on numerous occasions.

Q. And what was the performance of this strategy?

A. It was significant. It was significant. It was very good. I don't have the numbers in front of me, but I believe on the SBA metrics we were in the mid teens in terms of returns, which historically, like I said, we had sold a portfolio that was yielding 7 percent, and

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when we gave -- I reviewed some materials at one point in the record that showed a mid teens return in the first year of the corporate launch strategy.

Q. And that is the lower risk, right, higher yield, lower risk?

A. We believe significantly lower risk, and I guess time has proven out that it was a significantly better strategy than staying in the medallion business.

Q. And you had discussions -- did you have discussions in this 2009 time frame with the SBA regarding the corporate loan strategy program?

A. Yes. Fonda Stevens-Kelly was our account executive, as we -- the process of getting rid of the medallion loan was a significant process, meaning it was probably three to six months from signing to closing. She was given all the documents, familiarized with the transaction, familiarized with the change in business plan. We spent a significant time talking to different people at SBA

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including Paul Salgado about the corporate loan strategy, and that would -- that would segue into the 2009 debenture application because at that point they were familiar -- we had the beginnings of a track record, and Paul and Fonda went -- for our debenture application we got additional debentures based on the expansion of the corporate loan strategy, and that is to go back to my point when they examined some of our performance.

Q. So you -- when did you -- so you sold the medallion portfolio, and you are looking for new capital; is that correct?

A. Correct. October 2008 we closed. We were really -- we were short staffed, so there wasn't the ability to go out and look -- we had to close one transaction before we started looking forward is the best way to describe it.

MR. HASHEM: Can we pull up what I marked as Exhibit E.

(Exhibit 34 marked for

FEINSOD

identification.)

Q. Mr. Feinsod, if you could just hit refresh.

A. I just have C still. There it is. Got it.

Q. Okay. Give me a second.

Mr. Feinsod, do you recognize this document?

A. I do.

Q. What is it?

A. It was a -- it is a term sheet or the first page of a letter that contains a term sheet for a line of credit from KBC Bank.

Q. It is dated September 29, 2008; is that correct?

A. Yes. The loan was originally -- sorry.

Q. What was that?

A. The loan was originally for \$20 million with the ability to scale it to \$50 million, which was \$10 million more than would have been available under our previous facility that we paid off.

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Q. And was it your intention that -- the company's intention at the time as of September 29, 2008 to use this credit facility to scale Elk's investment portfolio back up?

A. It was specifically to scale Elk up, and as you can see from the term sheet Elk was the borrower. There is even some history of the borrower here in the term sheet and the description that -- of Ameritrans as the hundred percent owner of the borrower, and then I guess some description about the operations of the company.

Q. Now, this corporate loan strategy that you mentioned, was it an Elk strategy or an Ameritrans strategy?

A. It was an Elk strategy. It was all to leverage the ability of the SBIC to grow exponentially and then to use -- to maximize the value and the assets held by Ameritrans -- by Elk, excuse me, in order to maximize the value of the exemptive order, which had certain exemptions for

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asset coverage for BDCs.

Q. Now, you mentioned earlier in this deposition, the first part, the legacy Ameritrans assets. What were those roughly generally speaking?

A. I guess the legacy Ameritrans assets were generally referred to a non-taxicab loans that were left after -- after the sale of the medallion portfolio. The taxicab medallion portfolio provided the bulk of the cash flow for the consolidated company, and when that was sold we were left with the legacy loans and the corporate loan portfolio.

Q. Now, were there certain assets of Ameritrans and Elk -- so Ameritrans had some of its own investments; is that correct, that were separate from Elk --

A. Yes.

Q. -- and its subsidiaries?

A. It had a handful of investments that were all made prior to me joining the company other than --

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Q. Go ahead.

A. Other than the Bradway form that Mr. Weinberg showed before, I believe that was -- I don't believe that Ameritrans made an investment while I was there. A new investment. Excuse me.

Q. And so when you joined the company Ameritrans had these existing investments. It was -- those investments were part of a strategy by your predecessor; isn't that correct?

A. They were -- there was two buckets. There was a hodgepodge of loans that were owned by -- they were coowned by other SBICs, the majority of which were in receivership. New York SBICs that were clients Granoff Walker & Forlenza that were in default from when I got -- when I joined the company and were in the control of the Office of Liquidation. So very little happened -- actually nothing happened with those loans during my tenure at the company, and then there was a small portfolio of I guess again legacy assets,

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partnership interests and other -- then the life settlement policies.

Q. We have been talking about the life settlement policies. Did you -- were the life settlement policies something that you decided to invest in originally?

A. As a -- the board approved the settlement of the life settlement policies. It was made before I was a manager of management. Gary Granoff set up the structure. It was a joint venture between the company and something called Vibrant I believe.

Q. You mentioned this corporate loan strategy portfolio. So when you became CEO, was it -- was it your intention to -- let me rephrase the question.

When you became CEO, is it fair to say you were focused on building Elk's corporate loan portfolio?

A. Yes. To be clear when I became CEO, we had over 850 loans with an average

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balance probably below 200,000 and with a yield that was close to our cost of capital that it required high touch with the borrowers and were expensive to manage. So the business plan was to get out of those loans both for the credit quality and the expense to manage them and then find an asset class that could be managed more efficiently, which was corporate loans and more profitable. Excuse me.

Q. And your plan wasn't to have Ameritrans own these corporate loans; is that correct?

A. Never. It was always Elk, the first -- again, this was -- you know, this was day two -- this term sheet was two days -- was I guess while the medallion transaction was closing. This was to be the takeout, and Elk was always the engine.

Q. Was -- did that KBC transaction we were looking at go through?

A. No. We started documentation on

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it, and due to reasons in the broader market, nothing to do with Elk or Ameritrans, KBC's New York office closed that December as probably part of the greater banks crisis.

Q. Now, there was a banking crisis in the U.S. financial and global financial markets in 2008 and 2009; is that correct?

A. Yes. It is referred to as the great recession sometimes.

Q. And was part of that crisis a liquidity crisis?

A. Absolutely. Liquidity and both banks -- banks weren't making investments, which was why the fed was flooding the market with money because banks had started pulling in lines of credit. You know, rather than being in the -- in the business of lending money, they were in the business of getting paid back at this time.

Q. So, now, it is 2009. You are CEO. You are trying to grow Elk's portfolio backup; is that correct?

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A. Correct.

Q. And growing Elk's portfolio backup is the way to increase Elk's revenue, right?

A. Absolutely.

Q. And so in 2009 did you explore getting financing from the SBA?

A. Yes. And the reason we hadn't looked before is because it was -- it was more expensive -- it was the most expensive financing in the market at the point. Interest rates had dropped significantly during 2008, so we had -- so this bank just turning from the KBC facility it was a less expensive facility, but it was a single one-year facility. So we -- SBA -- so I am looking at -- this is Libor plus 250. So we were paying 2 and a half, 3 percent expense interest rate line. SBA financing was around 5 percent or -- but coming down due to market forces.

In January, we decided since we computed -- we spoke to Fonda and

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determined that we were eligible for additional debentures, and Fonda helped us get the package together for a debenture application. We filed that debenture application sometime I would say in January, a very detailed package. It includes the Form 468, and then for reasons that didn't make sense, but the market was familiar with, the SBA generally stopped issuing debentures in 2009 while they were waiting for a new head of the agency.

So we waited again without explanation other than we should get approved. We should get approved. We don't know why -- Fonda would tell us she put it in for approval, and sometime in September Fonda called and orally gave us an indication that we had been approved for I believe \$11 million in debentures, and we filed for those and drew them down by the end of the year, but for all of September -- sorry. Just to finish the thought, for that whole period of nine to

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eleven months while we were waiting, which should have been funded in two months, and we had a robust pipeline that we submitted with the application of money that was ready to be put to work, we didn't get funded. So those -- those investments disappeared. They were taken by the market. We kept the pipeline robust. We submitted -- you know, we updated documents, and when the money was funded we found suitable investments.

Q. So you sold your medallion loan portfolio in 2008, and you are trying to get financing in 2009 to grow your portfolio back up, and you are -- was it -- so in 2009 when the banks weren't lending, were you aware that the federal government had a plan of action to make money available through the SBA to be able to lend to small businesses?

A. Yes. President Obama had announced the Economic Recovery Act in 2009 with significant funding specifically to go to the SBIC division. It will be

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for other people to figure out took the delay for so long, but it was on the front page of the New York Times on the day he was -- on the day President Obama was confirmed, he announced the Economic Recovery Act, and that the SBA would be the primary engine for it.

Q. You mentioned previously that you expected to get the SBA loans within a couple of months. Why was that?

A. To my historical experience with government agencies was when you have a right to -- a right it is usually granted as long as you are in conformance with the regulations. So that was my expectation that we would apply for -- the same way I had applied to join to be an officer of Elk and completed the forms, and those were completed in due course. I expected that the application for debentures would be completed and processed in due course the same way Elk had historically accessed the debenture program more than fifteen times in its history.

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Q. And you mentioned instead of taking a couple of month it wasn't until September before it was approved; is that correct, late September?

A. Yes, and there is other SBICs, publically traded SBICs that were similarly waiting for action from the SBA during that time like Waterside Capital and Medallion Financial.

Q. And while waiting for SBA financing, so the banks aren't lending; the SBA isn't responding, you are unable to borrow money and build your portfolio; is that correct?

A. Correct.

Q. And you are unable to get Elk's revenues back up while the SBA is -- until you can rebuild your portfolio; Is that correct?

A. Yes, and it seemed like a waste of the resources to do anything other than to wait for the SBA. It seems we were in possession of the license. We had borrowing ability under the regulations,

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and it was confirmed by our analyst, and we were told by our analyst that we would receive the funds. At that point we stopped going to banks at that point because we were waiting on the SBA debentures.

Q. Now, after you got the money from SBA in late 2009, did you put that capital to work? Did you invest it?

A. I believe we did. Yes.

Q. And generally speaking what were the nature of the investments?

A. So 750,000 to \$2 million participations in senior secured loans. We would look for top quality sponsors. We would look for leverage -- low leverage usually high collateral packages, and generally an equity sponsor or a lead partner that had the wherewithal to manage a large loan where we were a small participant.

Q. Could we get -- sorry. Let me finish this thought.

Did you become aware at some

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point that Elk had entered capital impairment?

A. Yes, in the summer -- right after Gary resigned as CFO I believe we filed a 468, and that 468 -- when the 468 is delivered to SBA they analyze the 468, and that 468 was analyzed BY I guess Paul or Fonda, and they computed that we had a 40 -- a fractional percentage, I think it was about a \$36,000 capital impairment based on the formula IN the regulations.

Q. And what were -- had you been aware of that before -- so you mentioned that Gary Granoff was CFO. Was that something that you had discussed with Mr. Granoff before the 468?

A. No. Gary was unhappy and on his way out and was doing di minimus work on the way out and probably knew this was coming but didn't share it with me.

Q. Now, so we are now in kind of summer late 2010. What are you doing as CEO at this time prior to the capital impairment issue coming up?

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A. We talked about -- we were trying to raise money to execute the corporate loan strategy before -- this is before we heard about the capital impairment. We were in contact with a handful of investors that were probably in the 10 to 15 million range. I believe Paul came -- we went down in October for what is known as a portfolio review meeting, which is mandated under the regs. We walked through the 468. We walked through on an asset-by-asset basis at the SBA --

Q. You said we went down. Where where did you go?

A. I believe it was me and Silvia. We went down to SBA and went over the portfolio with Paul and Fonda on an asset-by-asset basis. We were given a couple of days to repair. We had known about the presentation in advance. We walked through everything that was going on. We would say -- we walked through what we had done to cure the capital

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impairment. We got the notice in July or August. When we first found out that we had about a 40,000 dollar shortfall, we made probably what Martin -- what Martin would refer to as a gap investment. In order to come back to compliance we made sure -- we spoke be to auditors and spoke to the board and decided and determined with SBA counsel that we were curing our capital impairment within the 15-dare cure period. That was our goal, and that was the guidance that we got.

MR. HAMESH: Could we pull up Exhibit F, please.

THE TECHNICIAN: I lost it for some reason.

MR. WEINBERG: Yes, i lost it, too.

THE WITNESS: I lost exhibit share.

THE TECHNICIAN: It went down.

THE WITNESS: It is not just me at this time.

THE TECHNICIAN: Yes, it is

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down. I could screen share it and put it in there later.

MR. HAMESH: Let's do that.

THE TECHNICIAN: It will take me a few minutes.

MR. HAMESH: Is that okay with you, Steven and Martin?

MR. WEINBERG: Yes. I think the witness is asking for a five-minute bathroom break.

THE WITNESS: Yes, two minutes.

MR. HASHEM: Sure. Let's take five minutes.

THE VIDEOGRAPHER: The time is 12:48. We are going off the record.

(Recess taken.)

(Exhibit 35 marked for identification.)

THE VIDEOGRAPHER: The time is 1:12, and we are back on the record. This is the beginning of media unit number 3.

Q. Mr. Feinsod, could you please take a look at Exhibit 34.

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MR. WEINBERG: Sorry, Ray. Do you mean 35?

MR. HASHEM: Sorry, 35.

THE VIDEOGRAPHER: I am not seeing Mr. Feinsod on the video.

THE WITNESS: No, I am here. I'm sorry. I am just trying to get Egnyte. I have a spinning wheel but not --

MR. WEINBERG: Does everybody else have Egnyte.

THE WITNESS: I almost had it and then I hit refresh. I apologize. I don't know what is taking so long. I have a little circular spinning wheel in the middle. It is almost here.

(Pause.)

A. Exhibit 35, thanks for your patience. 35 Project Arrow. I have a four-page PDF.

Q. So for the record, this is an e-mail dated July 23, 2012 from Michael Feinsod to Gene Maio.

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MR. WEINBERG: Maio.

Q. Mr. Feinsod, do you recognize this document?

A. Yes, I do.

Q. What is the context of this e-mail?

A. I had been introduced to Gene Maio, who is the head at this point of High FieldS Capital Management, which was part of J.P. Morgan. It was the entrepreneurial hedge fund division of J.P. Morgan, and the Arrow equity presentation -- I guess we had been introduced to him to Gene by Moelis & Company. So the Arrow equity presentation is the presentation that Moelis -- the investment Moelis had helped create when we engaged them to raise money when we capitalized Elk and Ameritrans in April of '11. So this was a year later. This seems to be a, if I am looking at the dates, July was I guess we were waiting on -- we were in no man's land with the SBA at this point. So somehow I guess

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that he had gotten around -- by reaching out to us, he had probably gotten around the no shop, and I gave this -- I prepared an e-mail giving the background of the situation as of this the summer.

Q. This is an e-mail kind of giving the background to a potential investor; is that correct, in July of 2012?

A. A potential investor while we were in no man's land on the Columbus Nova transaction so like an alternate.

Q. I would like to flip to page 2 and talk about a couple of things. So under Elk's capital needs, do you see that?

A. Uh-huh.

Q. On the left.

And it says at the end "In October 2010, Elk met with SBA and informed them of their portfolio condition and its intent to raise new equity."

Do you see that?

A. Yes.

Q. Are you referring to the meeting

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you mentioned earlier between yourself and Silvia Mullens and Paul Salgado of the SBA?

A. Yes, what I referred to as the portfolio review meeting.

Q. And as part of portfolio review meeting, you informed the SBA that you had a plan to raise new equity; is that correct?

MR. WEINBERG: Objecting to form.

Q. And what was the SBA's -- what was Paul Salgado's response to your proposal?

A. He was pleased with it. If it was going to keep us out of capital impairment and keep us out of his hair for lack of a better way of putting it, as long as we were back in compliance he was happy with it.

Q. When you left the meeting, what was your understanding of where you had left things with the SBA?

A. That we had given them a full

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update of our financial condition of how we had gotten there, how we fell into capital impairment at that point, and what we were doing to cure it. So we were in the midst of talking to people. I believe the presentation showed at least a \$10 million capital raise, and it seemed like a rational way to return to active lending, you know, back to active business.

Q. You mentioned a -- we have been discussing the due from parent line in Form 468. Do you understand what I am talking about?

A. Sure.

Q. At the meeting with Paul Salgado in October 2010, did you discuss a -- the due from parent or any advances from Elk to Ameritrans, intercompany balance?

A. Yes. We went through the Form 468. It was an item -- it was a line item in the discussions, and he was relieved that it would be paid down with the capital raise.

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Q. So the SBA understood that the proposal to raise new equity would pay down the intercompany balance?

MR. WEINBERG: Objection to the form as to what the SBA understood.

Q. You can answer the question.

A. Yes. Paul Salgado seemed to understand that part of the capital would remove the due to parent.

Q. Going to the next page or going to page 3, we had discussed the Columbus Nova transaction, right?

A. Uh-huh.

Q. Was that the only transaction that Elk was considering in the 2010 time frame?

A. In 2010, we had started I think -- we had started with a bunch of different companies that got progressively larger and more significant in terms of stature and in terms of size of capital. So I don't have a list, you know, like, for instance, full circle we had agreed to

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a deal with one of the first companies we met, but -- and then once again engagin Moelis the universe became quite large.

Q. When you say you engaged -- so here it says "Ameritrans had over 20 different financial firms competing to partner with Ameritrans management and scale up the investment strategy."

Do you see that?

A. Yes.

Q. Does that sound accurate?

A. Yes.

Q. So you had 20 different potential investors. Why did you pick CN?

A. A variety of reasons. They had significant -- they just completed a very significant transaction in structured finance. They bought Dearfield, CIFC Dearfield, which was a multibillion dollar fund pursuing a similar strategy in larger, non-SBIC-sized loans. The principals of Columbus Nova were kind of best in class from across Wall Street having significant experience at firms

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from Solomon Brothers to Goldman Sachs. They had a good understanding of leveraged loans and a significant amount of capital. At the end of the day, they agreed to pay the highest premium in order to make their investment. In I guess the last hours there was -- there was at least one other potential investor, and Columbus Nova given the size and given the dollars decided that the price per share that they were going to invest in Columbus -- in -- I'm sorry, in Ameritrans/Elk they kind of gave us a business -- an offer that we couldn't refuse.

Q. So in -- Columbus Nova and Ameritrans entered in a stock purchase agreement in April of 2011; is that correct?

A. Yes.

Q. Did you present either, you know, in 2011 before or slightly after the agreement, did you present the Columbus Nova transaction to the SBA?

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A. On several occasions before signing the agreement.

Q. Did you -- did you discuss the agreement with Paul Salgado?

A. We discussed that we were working on the agreement. We asked him -- we gave him drafts of the agreement, and then ultimately we just gave him the executed -- when we entered into the Definitive Agreement in April we sent it him that -- I believe that night and then began the change of control application.

Q. What was your recollection of what Paul Salgado said when you first told him about the agreement?

A. Initially he liked it. He seemed to say that it would be processed in the normal course, and we honestly believed this Fonda would be the key person handling the documentation. We believed that there would be a change in control application that should really involve background checks, and then Fonda got

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maybe -- maybe it had gotten away from Fonda at one point after it got -- the process while Fonda and Paul were recommending it it seemed once it got to the investment committee in the summer it was taken out of their hands.

Q. So focusing on your initial contact with Paul Salgado, did they -- did you have any belief in this time frame whether the transaction was likely to get approved or not?

A. Yes. I had a strong belief that it was going to be approved.

Q. What was your basis for that belief?

A. It met all the technical requirements. It met the spirit of the regulations. It was going to position Elk to be a larger and better participant within the SBIC program. It seemed like it was -- it was in the best interests of the shareholders. It was in the best of interests of all the constituents. There was no conceivable reason why it would get

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turned down. Much less we had no real -- no real interaction as to the substance on why -- as to the substance of this review.

Q. At this point in mid 2011 was the SBA aware of the performance of the corporate loan program to date, the corporate loan strategy to date?

A. Yes. Yes. During the Columbus Nova process, we gave them as I mentioned before a pretty exhaustive valuation using their metrics, a spreadsheet that the SBA uses to evaluate return on capital and cash on cash returns, and our numbers were spectacular.

Q. Turning to the next page, page 5, it says on August 2011 SBA first expressed concern regarding -- with the transaction. It talks about the management ownership diversity regulations we have been talking about.

Does that sound roughly accurate about the first time the SBA raised the MOD issue?

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A. Yes.

Q. Okay.

A. Yes, it does.

Q. What was your understanding of the MO -- of the SBA's concern with this MOD regulation?

A. My understanding of it was that it was -- again, I thought it was like a false -- a false issue. Our lawyers gave us guidance that the regulation that it was actually specifically an investment company should have ended the discussions there. We prepared exhaustive materials to go through all sorts of hypotheticals on the MOD, but there was no rhyme or reason as to how they were reviewing it and why they were reviewing it. There was di minimus contact between Elk and SBA on any substantive review of anything that might have been MOD-related. We knocked on doors. We begged for answers. We lobbied. We were just -- I can't tell you the dates here exactly, but I know that between the summer and December we neither

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got encouragement or discouragement just a bunch of false -- a bunch of arbitrary requests that had no -- no tie in to the process or -- sorry -- What seemed like the process to either approve or disapprove a change of control.

Q. So you -- when you say change in control, what was your understanding of what a change in controlling was?

A. SBA approval according to the regulations of a change in control, which specified -- I don't have the regs in front of me, but there were a handful of things, a handful of items including MOD -- including a review of MOD.

Q. Now, as part of the CN transaction, is it fair to say that Elk would be keeping most of the same board?

A. We went to great length --

MR. WEINBERG: Objection to the form.

MR. HAMESH: Sorry, Steven.

MR. WEINBERG: I am sorry.

Objection to the form.

FEINSOD

A. So we went to great lengths to keep continuity of the company, continuity of the management, continuity of the board, continuity of strategy. We were adding smarter people and more capital.

Q. You mentioned you were adding some additional people. There were people from CN; is that correct?

A. Correct.

Q. Okay. And what -- did the SBA ever express any concern to you about the -- the expertise or the qualifications of the new -- the new people from CN that would be added to the company?

A. Never.

Q. Did the SBA ever express any concern to you that the transaction wouldn't actually cure the capital impairment?

A. No, they did not.

Q. Did the SBA ever express any concern to you that the transaction wasn't economically sound for any reason?

A. No, and that would have been

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disingenuous.

Q. So staying on the same page, it says, "restructuring the transaction." At one point did CN and Ameritrans restructure the transaction?

A. Yes. It was at a significantly lower price, but we thought that we had to -- every change that we made was meant to address the SBA's concerns, and to the extent we had to accept a lower price from Columbus Nova, you know, from a business decision it was to move forward under this transaction, which would allow us to resume lending and growing.

Q. But the SBA rejected the revised transaction as well; is that correct?

A. Yes, on December 22, on the last day of the year.

Q. And what was your reaction to that rejection?

A. That it was consistent with their arbitrary and capricious conduct over the year. They had spent the year kicking the can down the road with

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like -- I guess at this point now it is -- you know, it was when knowledge -- we started to learn about some of the issues going on with the SBIC division with respect to the evergreen issue. That was when -- when that began to come out. We first started to hear rumors, you know, that they were -- that it was a desire to push evergreen SBICs out of business, and I think there had even been a point when Paul Salgado had asked me to consider in the medallion -- the Columbus Nova transaction we would -- we would organize it as a seven-year limited partnership.

Q. Do you recall when Paul Salgado asked you about that?

A. Sometime between the summer and his letter, and it didn't seem -- it wasn't -- it really wasn't -- we weren't open to it. The buyer wasn't open to it. The investors weren't open to it either. That was when we really understood the focus on the seven -- the indefinite life

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versus the limited partnership -- the LT structure.

Q. Now, this transaction is it fair to say that it involved a lot of work on the part of the employees of Elk and Ameritrans?

A. An enormous amount of work. We were diligenced. Every document was diligenced. Columbus Nova brought in Grant Thornton to do a quality of the underlying earnings, which is known as a QOE. We had fifteen people in the office for over ten days. We had Duff & Phelps come in. This was vetted and revetted, and it was a significant amount of work.

Q. This was also a public company transaction; is that correct?

A. Correct. And since it was a change of control, it was subject to SEC review through a proxy process.

Q. So there was a public disclosure of some sort, and you had to get SEC approval for the transaction; is that correct?

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A. We had to get shareholder approval through the use of a proxy statement to which we filed. The proxy statement was approved by the SEC in the normal course of business without comments. We set a shareholder meeting to approve the transaction. There were various laws. We were operating under Delaware law, New York law. A couple -- there were a lot of nuances that needed to be ticked off in order for the transaction to be approved correctly, and it was I believe in mid June with the only item -- we were ready to close the transaction but for one item, which was SBA approval.

Q. So you mentioned you had been involved in transactions that involved regulatory approval; is that correct?

A. Yes.

Q. And is it common for a transaction to -- for there to be an agreement at the beginning of a transaction and then a regulatory process

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and then a closing once regulatory approval is received?

A. Sure. To the extent that there is -- we are talking about underlying licenses that are issued by government, yes.

Q. Okay. And in your experience, does the government -- the regulatory agency ever come back and ask you to revise the transaction or raise some concerns?

A. They always come back with some some --

MR. WEINBERG: Object to the form.

A. I am sorry. My experience is that nothing is ever perfect, so there could be a typo on a form. There could be a misspelling on a form or there could be -- but there is -- usually the regulator's job is to process that, get it done if it is in compliance with the rules and regulations. So I had never fallen into a black hole with any transfer other

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than a regulator giving me specific instructions to go back and address an issue that needs to be addressed or highlighting an issue of concern or typographical error.

Q. Based on your prior experiences with the SEC and other regulatory agencies before the SBA denied the transaction, so we are talking just about your state of mind before you receive the rejection, did you expect that the SBA was going to approve this transaction?

A. A hundred percent.

Q. Was this transaction -- so you said this, you know, was a lot of work for Elk and Ameritrans.

Was this transaction -- was the purpose of this transaction to expand what we have been discussing as the legacy Ameritrans assets business, the assets that are only owned by Ameritrans?

A. Not at all. It was to build a business that would leverage off the SBIC market in the middle market, originating

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senior secured loans in the middle market.

Q. So you were trying to raise capital for Elk to build out its portfolio, right?

A. Correct.

Q. So all --

A. We had secured a party with an enormous amount of cap.

Q. So all of the work you mentioned that the employees of Elk and Ameritrans, legal expenses, all of that was trying to achieve this transaction that would raise capital for Elk to grow its portfolio, right?

A. That's correct.

Q. After the rejection, so now we are in February 2012, at the bottom of page 4 it says "In February 2012 Elk secured a new investor."

So after the rejection of the CN transaction, did you stop fundraising?

A. No. I was trying to save the company. We went back to full circle to the first people we had met. They were

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like a BDC -- if SBA felt that they were too big of an investor, we went to a smaller investor that wouldn't raise concerns.

MR. HAMESH: Can we pull up Exhibit G, please. Could you please mark exhibit G and GG at the same time.

(Exhibits 36 and 37 marked for identification.)

A. I have G open.

Q. Actually, Michael -- excuse me, Mr. Feinsod. Could you skip to GG.

A. It is loading I apologize. GG. Got it.

Q. This is an e-mail dated April 28, 2011 from Michael Feinsod to Elliott Press and Jonathan Weiner. Who is Elliott Press and Jonathan Weiner?

A. Elliott Press was a partner at Katten, and Jonathan Weiner was a senior associate, who was with our attorneys, my primary attorneys.

Q. It says "Attached is a revised

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background for proxy." Is that referring to the proxy statement disclosing to shareholders of the post transaction?

A. Yes, that is required when you do a transaction by the SEC.

Q. What is this list of companies that says here firms A, B, C, D, E? What is that exactly referring it?

A. We entered into -- these are over the year -- I'm sorry. When you do a change of control transaction in a proxy, you have to give a background of what led up to the proxy, generally meetings, shared information, nondisclosure agreements. All these companies were under nondisclosure agreements. So for purposes of the proxy, we identified them as -- used letters next to their name, and this was a list that was meant to correspond with the proxy, which would identify them by the letters next to their name.

Q. So these are all companies that you had meetings with attempting to raise

FEINSOD

capital?

A. Everyone of them, yes. The top four are banks, and then the A through O were private equity firms, and they go in chronological order. So from top to bottom it is significantly larger and more prestigious.

Q. So looking here at just some of these names, Soros. I've heard of George Soros. Is that a pretty big fund?

A. It is one of the largest. Arlon is Continental Grain. Pinebrook is one of the largest funds in the country, and GSO is owned by Blackstone. Gracie Capital is owned by Moelis. BTIG was acquired by Goldman Sachs. Union Capital is still around. CRP is Robert Ammerman. Full Circle and Convest are smaller private equity firms.

Q. So is it fair to say that you were having meetings with pretty major and significant financial firms?

A. The largest private equity firms in the country.

FEINSOD

Q. And what was their response to the proposed investment in Ameritrans and Elk?

A. How -- how it could be completed. One of the limitations is the size of an SBIC and the amount of capital that could be leveraged within it. So for some of these organizations that was a limiting factor. Some -- some of them it was not a limiting factor at all because they had smaller subsidiaries that could leverage -- that could take advantage of it, of the Elk/Ameritrans structure.

Q. So we have been talking about -- so Elk is a wholly-owned subsidiary of Ameritrans, right?

A. Correct.

Q. Or was. There was one share of Elk, right?

A. Yes.

Q. And you were trying to raise equity investments; is that correct?

A. Right.

Q. What is an equity investment?

FEINSOD

A. Cash -- I'm sorry. New capital that would come in as equity and be the lowest capital on the capital structure, so would be subordinate to any debt, preferred stock. We had preferred stock outstanding. So it would be subordinate to that in terms of liquidation and dividends, and it would be subordinate to any debt that the company had.

Q. Now, could -- you mentioned earlier you were raising the money for Elk's -- the corporate loan -- the corporate loan portfolio -- the strategy that we were talking about; is that correct?

A. Correct.

Q. That was Elk strategy, right?

A. Correct.

Q. Could you raise -- could Elk issue equity for somebody to invest in?

A. No, not on a practical basis.

Q. Because there was one share of Elk, and it was held by Ameritrans, correct?

FEINSOD

A. Correct.

Q. So --

A. And -- and Elk -- I apologize. I just wanted to clarify something. Ameritrans was able to raise money from outside investors if they got approval from the SBA. Following up on just your question before about whether or not approval -- whether or not I expected approval, I a hundred expected approval based on the process that Pride Capital had gone through when they acquired -- when they were considered a change of control as an investor. So I had significant experience in that. I might not have highlighted that in my answer before.

Q. So structurally although the investor would be in Ameritrans because Ameritrans would issue equity that the investor would purchase; is that correct?

A. Correct.

Q. But the purpose of the capital raise was to fund Elk, right?

FEINSOD

A. Correct. Elk couldn't raise any money directly without SBA approval. It would be impossible. Any equity capital would be impossible to do without that SBA approval, so that is why Ameritrans was set up to raise money.

Q. So you can put away this document. In 2012 or early 2012, did at a certain point you contemplate filing litigation against the SBA?

A. In 2012, yes. Following the rejection prior -- as the process being evaluated was coming to the end, I started to investigate lawyers who had litigated against SBIC for arbitrary treatment by the SBA. And then once we were rejected -- once the Columbus Nova transaction was rejected, I immediately engaged the first attorney to evaluate the SBA's actions and consider litigation.

Q. What was your basis for believing that you might be -- well, did you believe that you would be successful in this litigation?

FEINSOD

A. Yes, absolutely. I knew that --

Q. And what was --

A. I had watched what had gone on, and I am on honest broker, and I watched people at the SBA be dishonest in their actions, be dishonest in what they told us in the process. If you -- anybody who watched every member on board, every person at Columbus Nova believed that this was just -- you know, that there was no truth coming out of SBA, and that it had been an arbitrary and capricious review, and I was actually -- the first suggestion might have even come from Columbus Nova about suing the SBA.

Q. Now, you said every person. So did you talk about this issue with Columbus Nova?

A. At length, yes.

Q. And what was your understanding of their -- what was your impression of what they said?

A. Regarding the process? The

FEINSOD

rejection? I apologize.

Q. About your -- about their view of -- what was your impression of their view of what the SBA's process leading the rejection was --

MR. WEINBERG: Object to form.

Q. You can answer.

A. They were -- the principals at Columbus Nova that I spoke to considerably Jason Epstein was one of the people who raised how ridiculous the process had been. Each of the individuals who were potential board members I discussed it with them. There had been no substantive review. There had been no interaction with them. There had been no review of their application. So it was just all these missing pieces, which again led to this feeling, and after consulting -- after finding Bill Heyman, who had successfully sued the same division for arbitrary and capricious conduct in the evaluation of a license, and then as we began to learn more and

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more about the revolving door of people who worked within the SBIC division, the investment division, and what was actually going on with the review, it was concerned. There was no real review. There was a decision made to reject it, and then everything else was -- might have been smoke and mirrors and bad faith.

Q. Could we pull up Exhibit I, please.

(Exhibit 38 marked for identification.)

MR. HASHEM: Just let me know.

A. Here it is. Got it.

Q. Do you recognize this document?

A. Yes, I haven't seen it in a long time, but yes.

MR. WEINBERG: Can you hold up. Go ahead. I am sorry.

Q. So you -- Elk sued the SBA around March 2012. Does that sound about right?

A. Yes. That sounds correct.

Q. And at some point do you recall

FEINSOD

a legal document, the summary judgment briefs being filed?

A. Yes.

Q. And as part of Elk's response to the summary judgment briefs, do you recall that Elk got a declaration from a former SBA executive?

A. Yes. Yes, I do.

Q. And could we -- could you please go to page 53 of this document.

A. 53 of the original document?

Q. Sorry. It is 53 of the PDF.

A. It starts with paragraph 5.

Q. Yes. Do you see it says declaration of Ronald C. Cibolski?

A. Yes.

Q. And if you go to paragraph 4 it says, "Prior thereto from 1993 to 2003 I was employed by is the SBA as the director of the Oficce of SBIC operations."

Do you see that?

A. Yes.

Q. "In that position I managed the growth of the SBIC program from 2 billion

FEINSOD

to 20 billion and was responsible for managing the licensing of the new SBICs and changes of control of established SBICs."

Do you see that?

A. I do.

Q. Do you recall what Mr. Cibolski said about -- well let me go back.

Did -- as part of the litigation, did Elk ask Mr. Cibolski to review the facts of the CN transaction and the SBA's review of the transaction?

A. Yes.

Q. And do you recall what Mr. Cibolski's opinion was about the conduct of the SBA?

A. Yes. I'll summarize that it was arbitrary and capricious, and that everything was -- you know, piece by piece was every hurdle that they threw up was a false hurdle. Looking here the traditional investment company should have been -- that our original MOD argument was compliant -- not argument. I am sorry.

FEINSOD

Our initial submission was MOD compliant, and that all our work for that wasn't necessary all that, and there was a consistent effort throughout the department, the investment division to get rid of evergreen SBICs like Elk.

Q. Now, taking you back --

A. I was flabbergasted.

Q. Taking you back to September 2012 when you filed this summary judgement motion, did you review this declaration either before or after it was filed?

A. Yes.

Q. And you were aware in the September 2012 time frame of Mr. Cibolski's conclusions?

A. Yes.

Q. And looking specifically now -- I want to draw your attention to paragraph 13. It says, "I have reviewed the administrative record produced by the SBA and cannot discern any reason why the agency would have departed from its long-standing practice and interpretation

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of the MOD regulation. Further I could find no justification in the record for the SBA to conclude that AMTC was not a traditional investment company or any reasonable explanation by the SBA as to why it so found."

To your recollection, did Mr. Cibolski's opinion confirm what you had thought previously about the SBA approval process?

MR. WEINBERG: Objection to the form.

A. More than confirm. I had suspicions, and he went into great detail and explained and gave me more color. So it more than confirmed it.

Q. On page --

A. It disgusted -- it disgusted me.

Q. You previously testified that you had heard in various conversations that the SBA was seeking to get rid of evergreen SBICs; is that correct? That was your testimony?

MR. WEINBERG: Objection to

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the form.

A. Correct. We had heard that -- from numerous SBICs.

Q. And it was your belief at the time in 2012 that the SBA was trying to get rid of evergreen SBAs. Is that accurate?

A. By experience only and by experience and what we heard through the process.

Q. So paragraph 16 says, "I am aware that members of current investment committee disfavor the corporate perpetual license of the type held by Elk, and based on my experience they have attempted to eliminate the corporate perpetual life SBICs."

Do you see that?

A. I do.

Q. Do you recall when you reviewed this back in 2012 what was your response to Mr. Cibolski's opinion?

A. I agreed with it, and I was disgusted. I found it -- I found it

FEINSOD

reprehensible what the SBA had done, what they had done to Elk, what they had done to Elk shareholders, and how they wasted an enormous amount of time and money by being dishonest.

Q. Now, this is September this was filed, looking at the top of the document, September 12, 2012; is that correct?

A. Correct.

Q. Okay. And do you recall that in your allegations of Elk's lawsuit against the SBA, right, the basis of the allegations was that the SBA had acted arbitrarily and capriciously in denying the CN and Full Circle transactions; is that correct?

A. That was the basis of this lawsuit. Yes.

Q. Okay. After you filed this declaration, did you engage in settlement negotiations with the SBA?

A. Yes, but there was a couple -- but that was after some things happened with discovery. At some point

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between this being filed, the judge determined that the privilege log that had been submitted by the SBA was -- I am going to be generous here -- it was inaccurate, and that certain marked -- certain documents that were favorable to Elk had been marked as privileged when they weren't privileged, and due to sloppy bookkeeping they were produced in other parts of what is known as the administrative record.

At the hearing, the last hearing with the judge the judge was let's say angry to say the least with where we were and gave all parties a strong admonition to settle and get the case put to bed. But it was after -- it was a combination of this, the privilege, and what was going with what Elk was discovering in SBA's incomplete and I want to say fraudulent productions.

Q. Now, you engaged in settlement negotiations with the SBA in October of 2012; is that correct?

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A. Yes, we had an in-person meeting.

Q. Do you recall who was present at that meeting?

A. Myself, Justin Shur, who was representing Elk at the time; Arlene Embrey who was representing the SBA, and Tom Morris.

Q. And who is Tom Morris?

A. Tom Morris is the head of the Office of Liquidation or was. Excuse me.

Q. And the -- did you did ultimately reach a settlement with the SBA?

A. We did. We did. That was the first time we -- I met with Tom Morris, but he was intimately familiar with the portfolio. We walked through the portfolio, what was in the portfolio. We walked through the Form 468 and other materials. We went on an asset-by-asset basis what was left in Elk's portfolio. We discussed the case and presented a settlement offer.

FEINSOD

Q. And at the time, do you recall how much SBA -- how much Elk owed on the SBA debentures?

A. \$21.7 million I believe.

Q. And do you recall how much you settled for?

A. I believe it was \$9 million, \$9 and a half million.

Q. So is it fair to say that was a significant discount on the original debt?

A. Yes. Somehow the parties at that meeting managed to go to the investment committee and convince the people on the investment committee for SBA or whoever approved such a settlement that the settlement was in the best interest of SBA, and they approved it.

Q. And your reaction to the settlement at the time, did it vindicate in your opinion, in your view the decision to bring the lawsuit in the first place?

A. I considered it a win, an absolute win. We were ready to go to court. We had been vindicated. More

FEINSOD

than vindicated. It was a winning end to the lawsuit. I couldn't have done better. I couldn't -- you know, we could have done slightly better, \$9.6 million better, but it was a win.

Q. Was it a benefit to Elk to reduce the debt it owed to SBA by more than half?

A. Theoretically, yes, it was. It was the way to move -- it was a way to move on that point.

Q. That was in October of 2012. Could we now switch to the next -- so the document ending in 0345.PM in the PDF and mark that as the next exhibit, please.

MR. WEINBERG: Ray, what was the document ending in?

MR. HAMESH: The document ending in 0345PM.PDF. It starts with 1185885. If you could mark it as the next exhibit, please.

(Exhibit 39 marked for identification.)

Q. And, Mr. Feinsod, once the

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exhibit is marked, please refresh and take a look at it.

A. Got it.

Q. So this is a November 26, 2012 e-mail from yourself to John Laird, Peter Boockvar, Ivan Wolpert, Elliott Singer, correct?

A. Correct.

Q. This was after the settlement agreement was signed; is that correct?

A. Yes.

Q. And it says "Attached please find some background materials for our meeting tomorrow."

To your understanding, does that reflect a board meeting?

A. Yes.

Q. If you could scroll down to the attachment, the first page, it says "Board of Directors meeting November 27, 2012." If you scroll down to the third page of the PDF, it says "Update on SBA settlement."

Do you see that?

FEINSOD

A. I apologize. Update on SBA settlement. What page? Sorry.

Q. Page 4 of the PDF.

A. Got it. I got it. It has a handful of blanks.

Q. Yes. \$7.9 million due on November 15. Do you see that? December 15.

A. Collateral senior loan collateral -- yes.

Q. I am looking at 7.9 million due on December 15 of the page that is labeled 2.

A. Sorry. Got it.

Q. Okay. Does this refresh your recollection about how much you negotiated with the SBA to settle the --

A. Yes. This is referring to I believe the initial projected date of the settlement. We signed the settlement during the hurricane, so that was -- there was a delay initially. Sorry.

Q. It was a \$7.9 million due to the SBA, right?

FEINSOD

A. Correct.

Q. Okay. At this stage did you have -- did Elk seek to raise money to pay off the settlement amount -- to pay the settlement amount?

A. Consistently, yes. Every day.

Q. And what did you do?

A. Met with a handful of different lenders between December -- or investors and lenders between this period and I guess March, whenever the receivership order was entered.

Q. And did you seek to sell assets of Elk or Ameritrans to pay the amount due to the SBA?

A. Yes. There were corporate loans, and then there was even a legacy loan here called Soundview that was being marketed. So yes. We were trying to raise capital to meet the SBA settlement and to operate the combined companies.

Q. If we go down to page 7 of the PDF. Do you see that?

A. Yes. Overview.

FEINSOD

Q. It says "Given the recent SBA settlement and surrender of Elk's SBIC license, Ameritrans management is currently considering the following."

Do you see that?

A. Yes.

Q. Is that consistent with your recollection that as part of the settlement SB -- Elk gave up its SBA license?

A. Yes.

MR. WEINBERG: Objection to the form. The settlement will speak for itself as well as whether or not the license was surrendered.

Q. Was it your belief at the time that the settlement required Elk to give up its SBIC license?

A. It was. I signed it, and I believe I turned -- physically turned it over at this point it looks like.

Q. Now --

A. It was in a big -- it is in a big frame. It is probably 24 by 24 if

FEINSOD

you are looking for it. Sorry.

Q. So at this stage, which is November of 2012, is it fair to say that you were trying to figure out how to operate the company, not as an SBIC?

A. Yes. We were no longer an SBIC. Period. We ceased to be one on the settlement.

Q. And so --

A. And even here it looks like we were considering renaming the company as well because the Ameritrans business wasn't the -- it was more about Elk, which we still owned.

Q. And was part of the -- so your -- as part of -- let me go back and ask the question.

In November of 2012, did you believe that you would be able to pay off the amount that you owed the SBA as part of the settlement?

A. Yes, we had term sheets. We had people doing -- we had firms doing due diligence. We had a firm -- up until the

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last minute, Tom Morris was intimately from the record it seems that they had been talk stalking us for the two years prior to -- to the SB -- I guess from 2012 Tom Morris had been giving an outside firm information about our portfolio and indicating that it was imminent that we may be placed in liquidation. That firm popped up as a leading lender -- as a potential lender during that time and did a significant amount of work.

Q. And so at this stage your -- let me go back and ask the question.

Are you still taking meetings with potential lenders or potential investors at the end of 2012?

A. Through March of 2013, we were taking meetings and having people on site completing due diligence.

Q. And in April of 2013, Elk was -- the receivership order was entered; is that correct?

A. Yes. It was entered in the Eastern District Court.

FEINSOD

Q. And do you recall that Diana Seaborn was sent or came to review the books and records of Elk in 2013?

A. I believe -- I believe she came before that. I believe once the receivership happened it was Kevin Dale, who was -- was the person. I believe that I spoke to Seaborn during 2012 when she came in to review the status of the company, and I spent some time with Diana Seaborn giving her a runoff report where she was -- she represented that OLS WAS going to give us an opportunity to present -- I forget. Mr. Weinberg referred to the SOPs and the receivership deal with self-managed liquidations, and that is what -- we prepared for her a self-managed liquidation report.

Q. So let's go back a little bit. In February of 2012, you get a letter from the SBA saying you are being transferred into the Office of Liquidation; is that right?

A. We got a phone call I believe.

FEINSOD

I don't remember a letter.

Q. A phone call from Paul Salgado, right?

A. Uh-huh.

Q. Did Diana -- did you Diana Seaborn in February of 2012?

A. No. I believe she came in during the summer and May or in the warmer weather a couple of months later.

Q. Did you ever come to hear that Paul Salgado had asked Ms. Seaborn to hold off on proceeding with the liquidatio?

MR. WEINBERG: Objection to the form.

A. I don't believe so. No. The only thing I remember is that we had a clean audit report. That was the last I heard Paul was that he held it back, and Paul disappeared after that.

Q. When you first met with Ms. Seaborn, did you propose to Ms. Seaborn a proposal that Elk would raise money and get itself out of the Office of Liquidation?

FEINSOD

A. No. I believe we gave her a -- what would be a runoff report that would show the sale of investments with the proceeds going to pay down debentures on an expedited basis and included overhead, salary, and self-managing the process during that time.

Q. And what was Ms. Seaborn's reaction?

A. She never responded to --

MR. WEINBERG: Sorry.

Objection to the form. You can answer.

A. She never responded to it. I guess a few months later she contacted me and told me she was being transferred to a different department.

Q. And what was your experience with the Office of Liquidation between Ms. Seaborn's transfer and when the receivership order was entered into?

A. None other than that. I don't recall.

Q. And what was Elk's -- what was

FEINSOD

Elk's board -- what was Elk's -- what was Elk doing during the -- this time frame when you're waiting to hear back from the Office of Liquidation?

A. I believe we were in -- I believe we were litigating at this point. We were dual tracking, being respectful to OLS and giving them the information that they wanted while the lawsuit was proceeding.

Q. Did Office of Liquidation come to you with any further actions during the period of the lawsuit?

A. I don't believe so, no.

Q. So you settled the case now in October of 2012, and after October of 2012 what were you doing?

A. After we signed the settlement agreement, we were exploring selling assets, exploring finding a lender to help support a longer hold of the assets. You know, again there was about \$3 and half million in terms of SIBC legacy loans, which worked out hand in hand with

FEINSOD

the OLS. So that would be an issue. We were looking for lenders to help the growth of the company and makeup any capital shortfalls, so --

Q. And you were working on that right up until the receivership order was entered?

A. Right up until what?

Q. The receivership order was entered.

A. Yes, right until the last -- right up until the last minute we were talking again with Tradewinds Capital, which was somehow affiliated with Tom Morris. Tradewinds Capital had given us a term sheet, and that was going to be sufficient to get the deal done, and they became more vulture-like and decided they were going to step away and tried to -- you know, again it was something from the SBA production that I only -- I realized Tom was talking to Tradewinds Financial simultaneously and shared information about our portfolio. So I

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don't know -- some of the time he would do it and wasted in bad faith on that.

MR. HAMESH: All right. I

don't have any further -- no. I do.

Sorry.

Q. Two more things. And one -- so he would discussed -- we discussed previously in the first part of this deposition the custodian agreement and the security agreement.

Do you recall that?

A. Sure.

Q. And what is your recollection of those agreement?

A. They spring from the intercreditor agreement, the primary agreement, and the inter-creditor was agreed and negotiated between the SBA and Elk and the SBA --

MR. WEINBERG: I apologize for interrupting. The sound quality is very poor. Is the court reporter getting it?

It is -- Bob, are you hearing

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any kind of --

THE VIDEOGRAPHER: I am sure we are all hearing the same thing. It is very static.

MR. WEINBERG: Is there a way to reset that, Mr. Feinsod?

THE WITNESS: Is there a way to what? It is not my static. It is static in the system.

THE VIDEOGRAPHER: It is your audio that is having an issue right now. It is your microphone.

THE WITNESS: It is mine.

Hold on one second.

(Pause.)

A. Ray, I apologize.

Q. No worries. You were saying the intercreditor agreement.

A. The intercreditor agreement was the primary agreement. Historically Elk had been a bank borrower and as well as had SBA debentures. The intercreditor agreement was set up between Elk and its banks for the sole purpose where the SBA

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agreed to subordinate its senior interest to the banks. So once -- once the bank debt was gone, they were the senior creditor, and the agreements weren't relevant. The -- there was no need for an intercreditor agreement, and we were like every other SBA operating with the SBA as the senior creditor.

Q. Did you have any discussions with Fonda Stevens-Kelly or Paul Salgado regarding Elk's obligations under the intercreditor agreement or the custodian agreement and security agreement?

A. We did. Immediately after paying down -- after completing the medallion transaction in 2008 -- let me back up. Under the intercreditor agreement Elk was required to submit a borrowing base I believe on a monthly basis to SBA and its banks. Once the intercreditor -- once the banks had been paid off, that borrowing agreement -- that borrowing base did not work any more. It was a math -- it mathematically failed

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because historically it always had a negative cash balance, and once you put a cash balance into that borrowing base the borrowing base formula failed, which sounds complex, but if you look at it it made sense at the time to everybody who looked at it, and since there were no senior creditors and since the borrowing basis would technically fail from that point in time, Paul Salgado told Elk to stop submitting the borrowing base, and the bank said the same thing.

Q. So after the bank debt was paid off, were you aware of obligations that Elk had under those agreements?

A. We believe they had all -- they disappeared, all the benefits. The benefits ran to the banks, and then they got to a point where IDB was lead lender and custodian, and they reduced our fee immediately and then asked us to leave. They didn't -- since we weren't a borrower any more, it just was -- it was an expense that they didn't want to do business with

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us. It was more profitable to have Elk as a borrower than any other party.

Q. Was it your understanding at this time after the bank debt was paid off that Elk was required to deposit particular funds from asset sales in IDB accounts?

A. NO --

MR. WEINBERG: Objection to form. The agreements speak for themselves.

A. My understanding --

MR. HAMESH: I am asking for Mr. Feinsod's understanding.

A. My understanding is that it absolutely wasn't required any more. If you look at the agreements, you know, when the agreement are read closely, you could see that there is no -- the responsibilities lapse at that point.

Q. Did -- would it have been possible for Elk to deposit those funds in an IDB account at that time?

A. No, they stopped taking -- they

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stopped wanting to do business with us after a certain period of time.

Q. So --

A. And they asked us to remove the collateral, you know, what was -- we were asked to remove all the documents from their safe at one point towards the end.

MR. HAMESH: Could we get just a -- go off the record for a minute.

Let me go into a breakout room with Mr. Feinsod, and then we can -- I think we are done, but I just want to double-check.

THE VIDEOGRAPHER: The time is 2:23, and We are going off the record.

(Recess taken.)

THE VIDEOGRAPHER: Time is 2:35. We are back on the record.

EXAMINATION BY WEINBERG:

Q. Mr. Feinsod, you understand that was later with respect to the communication from IDB with respect to removing documents from the safe --

FEINSOD

MR. HASHEM: Sorry.

A. I apologize. Could you--

Q. Sure. I could start again.

A. Thank you.

Q. Can you hear me now?

A. Now I can.

Q. Okay. You had said that it was much closer to the end when IDB had communicated with Elk about removing documents that IDB had as custodian.

Do you remember when that was? Was that late in 2011 or 2012?

A. I don't recall.

Q. Okay. And in terms of the identification of the custodian is that something that is identified in the 10Q and 10Ks that Ameritrans files with the SEC?

A. I don't recall. They don't file anything any more.

Q. In terms of what they did, would -- the disclosures of the who custodians were in the 10Q that would have been -- whatever the filing was by Ameritrans that

FEINSOD

would have been accurate, correct?

A. The whole document was filed as an exhibit with the SEC. So the documents are held there.

MR. HASHEM: Objection so far as this calls for a legal conclusion that the custodian -- the term custodian in the agreement is the same as the term custodian in the 10Q.

Q. Okay. In terms of the intercreditor agreement that you are referring to, was that a document that required you any amendments to be in writing?

A. I don't recall. I don't have it in front of me.

Q. Okay. In terms of the checking account, if you go to Exhibit 30, please. If you go to the last page.

A. Just bear with me I am waiting on Veritext.

Q. Of course.

A. Or Egnyte. Sorry. Exhibit 3-0?

FEINSOD

Q. Yes, page 3. It lists the Elk bank accounts. Is there an Elk bank account that is listed as a checking account at IDB with a balance as of April 19, 2019?

A. On this sheet, yes.

Q. Okay. We can put that away. On -- in terms of the discussions with counsel regarding the commencement of the lawsuit by Elk against the SBA, do you recall that counsel had explained that it would be difficult to successfully prosecute a claim if the SBA was -- is entitled to pursue a liquidation based on Elk's capital impairment?

A. I mean the minutes or a summary. I am sure it was difficult but not impossible as it proved.

Q. Yet the litigation was authorized by -- was recommended by you and authorized by the board to try to leverage a settlement with the SBA; is that right?

A. To try and actually expose the

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SBA's arbitrary and capricious conduct and to secure whatever damages we were entitled to in the rejection.

Q. Okay. You didn't get any damages. In fact counsel advised you that you were not entitled to monetary damages; isn't that right?

A. No, it is not. Counsel advised that we may not be entitled unless the fact -- once we found out the actions by the SBA we believed that damages may have been available.

Q. Elk remained in the Office of Liquidation for the entire period until it was placed in receivership; is that right?

A. I don't believe so.

Q. What evidence do you have that Elk was removed from the Office of Liquidation?

A. I don't have any evidence that it was placed in the Office of Liquidation.

Q. In terms of -- can we load the --

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MR. WEINBERG: Kelsey, do you have the document that was --

MS. BILODEAU: It is marked Exhibit 40.

(Exhibit 40 marked for identification.)

Q. If you could take a look at Exhibit 40, please. During the -- after February of 2012 weren't you dealing with Diana Seaborn with the Office of Liquidation?

A. After what? I didn't hear the date.

Q. After February of 2012, didn't you hear from Paul Salgado that you wouldn't hear from him because he was with operations, and you would hear from the Office of Liquidation?

A. If I you say so. I don't recall.

Q. And didn't you just testify that you spoke to Diana Seaborn of the Office of Liquidation with respect to drafting a self-liquidation plan?

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A. I said I met with her.

Q. Okay. But she was with the Office of Liquidation?

A. I don't know who she was with at the time.

Q. And you were -- you met with her because Elk was placed in the Office of Liquidation, didn't you?

A. I don't recall.

Q. Okay. When you were in discussions with Tom Morris, wasn't that on behalf of the -- between Elk and SBA by the Office of Liquidation?

A. No. It was actually between Elk as plaintiff and SBA as defendant in our case. That was the one time I met with him to settle the lawsuit.

Q. Okay. If you look at Exhibit 40, please. If you would review -- this is a letter to you from Sean Green dated March 6, 2012.

A. Okay.

Q. Does this letter state history of Elk's condition of capital impairment?

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MR. HASHEM: Objection.

A. I need to read it if you want.

Q. Sure.

(Pause.)

A. Okay. I read the letter.

Q. Does this letter reflect the history of Elk's condition of capital impairment?

A. Incorrectly and fraudulently.

Q. Okay. Did you -- does this -- did you write a letter back to the SBA?

A. I don't --

MR. WEINBERG: Withdrawn.

Q. This letter gives Elk a notice to cure period within 15 days; is that right?

A. Which letter? Are we still looking at the same letter, the one with the fraudulent statements?

MR. WEINBERG: Objection to the characterization of fraudulent statements.

Q. There are statements there with

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respect to the condition of capital impairment. Do you have a letter back to the SBA refuting the percentage calculation of the capital impairment?

A. I don't recall, but you said that Paul Salgado no longer wanted to hear from us, and Paul Salgado is still the contact person here. So we are confusing persons and time frames.

Q. Okay. This is a letter dated March 6, 2012, and it is from Sean Green, and it is giving notice with -- there is a reference to the transfer to the Office of Liquidation; is that correct? That is in the third to last paragraph on the second page.

A. A potential transfer. There is -- we have a can't secure in this letter, and Paul -- you said Paul Salgado doesn't work in the Office of Liquidation, so it doesn't appear -- I am getting -- you are confusing me here.

Q. The letter speaks for itself. It doesn't say potential transfer. It

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says notwithstanding the transfer to the Office of Liquidation, correct?

A. Comma "SBA will suspend liquidation at least for a period of 15 days from the date of this letter to allow the licensee to cure its condition," which is similar to the paragraph two paragraphs above that was the genesis of the litigation. Okay. So just to flesh it out.

Q. Did it --

A. You can conflate the two.

Q. Did Elk cure the condition of capital impairment?

A. Yes, absolutely.

Q. When?

A. February -- it was shortly in October of 2010.

Q. I am you talking about in response to this letter of March of 2012.

A. Okay. As I said --

Q. Did the SBA -- let me finish finish the question. Did Elk make the payment to the SBA to cure the condition

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of capital impairment?

A. Elk would not be required to make a payment to the SBA to cure any condition of capital impairment. Would they? I don't understand. Why would make a payment to SBA?

Q. In response to this letter, did Elk make a payment -- did Elk get an investment to secure capital impairment?

A. In response to that second paragraph of this page, Elk secured its capital impairment.

Q. I am not asking about the second paragraph. I am asking --

A. This letter was a fraudulent attempt to stop our litigation, so --

Q. That wasn't the --

A. It speaks to itself.

Q. The letter speaks to itself. The litigation will speak to itself.

I am asking the notice to cure that was given for Elk to cure its capital impairment to the SBA's satisfaction within 15 days from the date of this

1 FEINSOD
2 letter, did Elk do that?
3 A. Yes.
4 Q. When?
5 A. Sometime between October 5 and
6 October 20 as required by the paragraph
7 above it.
8 Q. You are talking about paragraph
9 2?
10 A. Yes.
11 Q. Okay. This letter talks about
12 the condition of capital impairment
13 continuing after the payment of the
14 \$40,000 investment capital contribution
15 into Elk.
16 MR. HASHEM: Just one second,
17 Michael. I am going to object.
18 This calls for a legal conclusion.
19 Mr. Feinsod disagrees with the
20 letter's legal characterization of
21 when there was and when there was not
22 a condition of capital impairment
23 and, you are asking him to accept the
24 letter's characterization that the
25 gap payment to cure the capital

1 FEINSOD
2 impairment on a gap basis wasn't
3 sufficient as a point that wasn't
4 disputed, and it is still disputed.
5 Q. Okay. After February of 2012
6 you were advised by Paul Salgado that Elk
7 would be transferred to the Office of:
8 Liquidation based upon its condition of
9 capital impairment, correct?
10 A. You are referring to a phone
11 call?
12 Q. Yes.
13 A. I received a voicemail from Paul
14 Salgado, yes.
15 Q. After February of 2012, did Elk
16 have a condition of capital impairment?
17 A. We --
18 MR. HASHEM: Objection.
19 Calls for a legal conclusion.
20 MR. WEINBERG: No. It is a
21 factual calculation.
22 Q. Is Elk responsible for reporting
23 whether or not it has a condition of
24 capital impairment to the SBA, Mr.
25 Feinsod?

1 FEINSOD
2 MR. HASHEM: Objection.
3 Calls for a legal conclusion.
4 Q. You can answer.
5 A. Not any more. Elk is not
6 responsible for anything.
7 Q. Did -- in February of 2012, did
8 Elk have an obligation to report a
9 condition of capital impairment to the
10 SBA?
11 A. I don't recall.
12 Q. Did Elk calculate a percentage
13 for a condition of capital impairment as
14 of February of 2012?
15 A. I don't recall.
16 Q. As of -- at any time in 2012 did
17 Elk calculate the -- a condition of
18 capital impairment?
19 A. I don't recall specifically.
20 Q. Okay. Did Elk receive any
21 investment in 2012 that cured any capital
22 impairment percentage?
23 A. I don't recall.
24 Q. You can put this exhibit away.
25 Thank you.

1 FEINSOD
2 You had referred that the
3 exemptive order -- that the application
4 that was submitted to the SEC was
5 negotiated or discussed with the SBA. Do
6 you recall that testimony?
7 A. Yes.
8 Q. Okay. Who was the discussions
9 or negotiation between Elk and the SBA?
10 A. I don't recall. Carol Fenler
11 was one of the people. I have seen Carol
12 Fenler's name on one of the documents.
13 Q. When you say on the documents,
14 what documents are you referring to?
15 A. The correspondence relating
16 to -- in the record regarding --
17 Q. Referring to the SEC exemptive
18 order application?
19 A. Yes.
20 Q. And based upon the SEC
21 application and exemptive order, Elk was
22 still a licensed SBIC, correct?
23 A. When?
24 Q. When it was operating as an
25 SBIC.

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A. Until when? Yes. Until the date it surrendered its SBIC license, it was operating as an SBIC.

Q. And as an SBIC it was operating under the Small Business Investment Act and the regulations, correct?

A. I believe so.

Q. In terms of -- if you look at Exhibit 39, please. Hold on. I am sorry. Now I am in the wrong exhibit.

Let's go back to Exhibit 38.

MR. WEINBERG: We were looking at the Declaration. Was that page 53?

MR. HASHEM: That is 53.

MR. WEINBERG: Was that Ronald Cibolski?

MR. HASHEM: Cibolski I think.

MR. WEINBERG: Cibolski. Ron Cibolski.

Q. Mr. Feinsod, was Mr. Cibolski retained as an expert by you?

A. Yes, I believe so.

Q. And how much was Mr. Cibolski

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paid for his services for Elk?

A. I don't recall.

Q. In addition to the affidavit, did Mr. Cibolski provide any other documents to Elk?

A. I don't recall.

Q. Other than being paid for -- do you know if Mr. Cibolski was paid a set fee or an hourly rate for his services to Elk?

A. I don't recall.

Q. And how did you come to learn of Mr. Cibolski?

A. I don't recall. I believe -- actually I believe that Ron -- the lawyers found him. He had maybe testified in other cases.

Q. Okay. And in addition to the declaration, do you know what other services Mr. Cibolski rendered to Elk as a consultant/expert?

A. I don't believe any. Does it say that he did?

Q. I am just asking what you

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recall.

A. Okay.

Q. Do you recall any other services?

A. No. None.

Q. Okay. You had referenced that during the Columbus -- prior to entering into the agreement with Columbus Nova there was one other potential investor that Elk was considering, but that Columbus Nova had made an offer that Ameritrans and Elk could not refuse.

Do you remember that testimony, your statement?

MR. HASHEM: Objection mischaracterizes the testimony. I believe the testimony said that there was 20 potential investors.

MR. WEINBERG: We are talking about two different things.

Q. There was -- over the period of time you talked with a total of 20 potential investors; is that right?

A. More than 20.

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Q. More than 20?

A. Yes.

Q. Did you -- prior to any no shop agreement with CN, did you enter into an agreement with any other potential investor?

A. We entered into nondisclosure agreements and due diligence agreements.

Q. Okay. But did you -- okay. Did you agree to the terms with any other potential investor prior to entering into the agreement with CN?

MR. HASHEM: Objection to form.

A. No. We didn't enter into a stock purchase agreement with any other investors. We had term sheets, but a stock purchase agreement takes a long time to negotiate and complete, as did this one.

Q. Do you recall your testimony earlier that at the time that you considered -- that you accepted CN's offer that Ameritrans or Elk could not refuse

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there was one other potential investor that Ameritrans was considering for investment?

MR. SEIDEL: Objection to form.

A. I don't know if it is verbatim my testimony, but I believe I know about --

Q. Okay. Do you know who was the name -- at the time that you were considering entering into the nondisclosure agreement with Columbus Nova --

A. Lattenberg Thalman and Howard Lorber, L-O-R-B-E-R.

Q. I am sorry. Lattenberg?

A. Lattenberg Thalman, a New York Stock Exchange listed firm and its chairman Howard Lorber.

Q. Okay. What were the terms of the -- was there a term sheet?

A. I believe there was.

Q. What were the terms of that potential agreement -- investor?

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A. I don't recall.

Q. How were the Columbus Nova terms better than the terms from Lattenberg?

A. Based on the price of their investment and the size of their investment.

Q. Do you know how the price compared to the Lattenberg offer?

A. I don't, but it was -- I am sure it was a premium.

Q. Do you know --

A. It was probably --

Q. Go ahead.

A. It was -- and is documented in the proxy statement.

Q. Do you remember how the size was different by Columbus Nova compared to the Lattenberg investment on the term sheet?

A. I do not.

Q. If you go to Exhibit 39. Go to page 2.

A. Yes.

Q. Actually before we -- I am sorry. You can leave that open please,

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but before we ask a question on page 2 of Exhibit 39, in the litigation by Elk against the SBA, do you recall there was a decision by the judge denying Elk's application for a preliminary injunction?

A. No, I don't.

Q. Okay.

A. Was it a TRO or was it a PI? I don't remember.

Q. Either one. Do you recall the decision denying the TRO?

A. I recall an initial decision denying it but with a footnote encouraging us to proceed.

Q. Okay. On the -- looking at page 2 of the Exhibit 39, do you see that "must use debt raise to mitigate taxability of COD," and then there is an arrow "BDO memo."

What is COD?

A. I bet it is cancellation of indebtedness income.

Q. Okay. And how would you mitigate taxability of COD?

FEINSOD

A. I don't recall.

Q. Wasn't there a consideration -- did the BDO memo discuss limiting the taxability of the cancellation based upon the determination of whether or not Elk was insolvent?

A. I don't recall.

Q. During the time -- I'm sorry.

Q. When -- we have talked about the structure of Elk, correct?

A. Yes.

Q. Okay. And you were the president of Ameritrans, correct?

A. And Elk.

Q. And Elk. Okay.

At the time -- at different intervals in 2011 and 2012 there were discussions as to what the duties are to Elk or Elk's creditors if Elk is insolvent; is that correct?

A. There were board -- there were board meetings where that was discussed.

Q. Okay. And obviously you and the board members and officers owe a

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fiduciary duty to Elk, correct?

MR. SEIDEL: Objection to form.

A. We owe fiduciary duties to numerous parties, but we did --

Q. Among which that includes Elk; is that right?

A. Among which that includes Elk. That is correct.

Q. Okay. And during 2010, did you at any time make -- did Elk at any time make a determination whether Elk was insolvent?

A. I don't recall.

Q. During 2011 did you at --

MR. WEINBERG: Well withdrawn.

Q. During 2010 did you at any time make a determination as to whether Ameritrans was insolvent?

A. I don't recall.

Q. During 2011 did you or the board at any time make a determination that Elk was insolvent?

A. I don't recall.

Q. During 2011 did you or the board

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make a determination at any time that Ameritrans was insolvent?

A. I don't recall.

Q. During 2012, the same question. Did you or the board make a determination that either Elk or Ameritrans were insolvent?

A. I don't recall.

Q. During 2013 before Elk was placed in receivership, did you or the board make any determination that either Elk or Ameritrans was insolvent?

A. I don't recall.

MR. WEINBERG: One minute please.

(Pause.)

Q. You admitted -- I am sorry, Mr. Feinsod. One other follow-up.

THE VIDEOGRAPHER: He is not here.

MR. WEINBERG: Then it's the perfect time to ask I guess.

MS. BILODEAU: We are still recording.

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MR. WEINBERG: My apologies.

MS. BILODEAU: Should we go off the record until the witness comes back?

MR. WEINBERG: Sure.

THE VIDEOGRAPHER: The time is 3:04, and we are going off the record. This is the end of media unit number 3.

(Recess taken.)

THE VIDEOGRAPHER: The time is 3:05, and we are back on the record. This is the beginning of media unit number 4.

Q. Mr. Feinsod, you had made a statement about that at its peak Elk and Ameritrans had about \$60 million in assets; is that right?

A. I believe so. Yes.

Q. So --

A. During my tenure.

Q. I am sorry. What?

A. During my tenure with the company.

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Q. As long as you were on the Board of Directors; is that right?

A. I believe so. Yes.

Q. And after the sale of the medallion loans the -- obviously the 10K would reflect the total value of the assets of Ameritrans Capital Corporation on a consolidated basis, correct?

A. That wouldn't be filed until a year later.

Q. Okay. So if we looked at the 10K from the year before and the year later, we could see what the value was of the company's assets for Ameritrans Capital Corporation on a consolidated basis, correct?

A. On those specific dates, yes, but not on any interim dates.

Q. Okay.

A. There is quarterly report in between 10Ks, and the 10Ks lagged by 90 days.

Q. Sure. And the same thing with the 468s. If we look at the 468s before

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2 the medallion loan portfolio was sold and
3 after the medallion loan portfolio was
4 sold, we would have the total value of
5 assets that were owned by Elk, correct?
6 A. Yes.
7 Q. Okay. Thank you.
8 A. They were recorded differently
9 just to point it out.
10 Q. Okay.
11 A. One is under GAAP, and one is
12 under a different accounting standard.
13 Q. Was that GAAS?
14 A. I don't recall, but I know that
15 SEC is under GAAP.
16 Q. Okay. And if we compare the
17 identification of the assets in the 468s
18 compared with the identification of assets
19 that are in a 10K or a 10Q, we could
20 determine which assets were owned in
21 Ameritrans Capital Corporation's name --
22 MR. HAMESH: Objection to --
23 Q. As well as any assets that were
24 owned in the name of Elk Funding Corp.; is
25 that right?

1 FEINSOD
2 A. Sure. Yes.
3 MR. WEINBERG: Thank you. No
4 further questions.
5 MR. HASHEM: Can I ask one
6 question on one thing?
7 MR. SEIDEL: I have actually
8 one more question for him.
9 MR. HASHEM: Why don't you go
10 ahead.
11 MR. SEIDEL: Okay.
12 EXAMINATION BY MR. SEIDEL:
13 Q. Mr. Feinsod, Mr. Weinberg asked
14 you a bunch of questions about agreements
15 and offers and term sheets and the like.
16 I want you to put yourself back in time to
17 January of 2011, the time when you
18 began -- when you reach a preliminary
19 agreement with Columbus Nova to begin to
20 pay for the deal; is that right?
21 A. Correct.
22 Q. Okay. At that time if Columbus
23 Nova hadn't come around, were there other
24 bidders who had put offers on the table
25 that would have turned into a paid

1 FEINSOD
2 transaction?
3 MR. WEINBERG: Objection to
4 the form. Highly speculative.
5 Q. You can answer the question.
6 A. It would be highly likely that
7 we would have gotten term sheets from at
8 least five of them and probably more
9 considering the tempo of the -- the tempo
10 and size of the people that we were
11 dealing with at that time as I showed you
12 in that A through M memo. It was
13 accelerating. The interest was --
14 Q. And in fact you had term sheets
15 from some of them already, didn't you?
16 A. We had several, yes.
17 Q. So you had term sheets to
18 compare between Columbus Nova and others,
19 and as we talked about there were
20 questions of price -- value. There were
21 questions of execution risk for some of
22 them, but if there was no Columbus Nova
23 you would have been -- you would have
24 easily been able to proceed with another
25 transaction, correct?

1 FEINSOD
2 MR. WEINBERG: Objection to
3 the form.
4 A. Easily, yes. And --
5 Q. And you -- I'm sorry. I just
6 want to speed this up for you,
7 Mr. Feinsod. You worked at Paul Hastings,
8 right, and you did a lot of cellular
9 deals?
10 A. Yes.
11 Q. Okay. And some of these were
12 for public cellular companies, right?
13 A. Yes.
14 Q. And they -- the companies
15 went -- hired investment bankers and went
16 through an auction process?
17 A. In many instances, yes.
18 Q. More than a dozen of those in
19 your career?
20 A. Yes, many.
21 Q. Okay. In exactly how many of
22 those did competing bidders all come to
23 written agreements?
24 A. None.
25 Q. Okay. Tell me what it would

FEINSOD

look like -- this is going to be --

A. I apologize.

Q. This is going to a jury. So for someone who is not experienced, who hasn't done a dozen of these things, tell me what it looks like. You got an auction process, right. You do sign some NDAs.

A. Yes.

Q. Some bidders fall away at that point because they look in the data room, and they don't want to proceed. Others proceed. Some put in term sheets, right?

MR. WEINBERG: Objection.

Q. Okay. Walk me through how it works. Tell me how you get to a signed agreement.

A. For a process like this and to use the January time frame that you have asked about, we had been talking to sophisticated investors since April at that point, signed NDAs with I believe according to that list 20 of them, and if I -- I believe at the time this was signed we had at least four active term sheets in

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front of the company, including Lattenberg, which I referred to, and the other parties the latter parties and maybe even earlier parties. So we would have been -- bringing in the highest and best offer along and at the other end of the spectrum the most certain offer to close and anything in between trying to satisfy those potential investors with due diligence, a rapid responsive of information, clarity in the flow of the information, and the ability for them to refine their term sheet, so that a public company like hours could undertake the significant time and investment to enter into a stock purchase agreement, proxy approval process, and simultaneously approach the SBA for change of control approval. Does that help with --

Q. That is very helpful, and I want to break that down just a little bit further before we wrap up today.

You mentioned that the substantial cost of entering into written

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agreements. So people don't just enter into them willy-nilly. You wait until you have your highest and best, and then you enter into an agreement with them, right?

A. Yes, while keeping the next two warm simultaneously.

Q. You keep them warm, but you don't sign agreements with them?

A. No.

Q. And once you've got an agreement, you are usually bound by exclusivity, so you can't sign any other agreements at that point, right, until the deal terminates?

A. It is bargained in the deal. In this case Columbus Nova justified getting a no show.

Q. So the notion of signing multiple agreements when you are subject to a no shop is frankly silly, isn't it?

A. It opens the company to liability. It wouldn't be prudent.

MR. SEIDEL: Thanks. That is it.

FEINSOD

MR. HASHEM: One more question on my part, Mr. Feinsod. I guess two more questions. Really just one.

FEINSOD

EXAMINATION BY MR. HASHEM:

Q. Elk and Ameritrans filed -- we had been talking about 10Ks and 10Qs, and Elk and Ameritrans filed -- or Ameritrans filed SEC disclosures on a consolidated basis; is that correct?

A. Correct.

Q. And a consolidated basis means that the companies financials were reported as a whole, right?

A. Correct.

Q. So if you look in the 10K or the 10Q, the disclosure of the assets there, is that list just including -- well, let me back up.

Do Elk's assets get recorded on the 10K and 10Q of Ameritrans?

A. Yes.

MR. HAMESH: Okay. That's it.

EXAMINATION BY MR. WEINBERG:

Q. Mr. Feinsod was another reason that the SBA had rejected the agreement with Columbus Nova that ultimately common ownership of Columbus Nova failed to

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Victor Vexelberg?

A. I have never heard that. Is that written somewhere?

Q. Okay. Have you heard of Victor Vexelberg?

A. Yes.

Q. Okay. Are you -- are you aware -- do you know if the Columbus Nova agreement was rejected based in part on Victor Vexelberg not willing to submit to a background check with the SBA?

A. I don't recall that. I don't even know -- I didn't --

Q. You didn't know that?

A. No.

Q. Okay. In terms of the other -- prior to entering into a no shop agreement with Columbus Nova, the term sheets with other companies, do you know if they involved companies that did not have a common ownership in one person?

A. No, I have no idea what your question means.

Q. In terms of the -- of any term

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sheet with any other investor in Ameritrans, do you know if any of those term sheets involved a company making the investment that did not come down to common ownership by one person?

A. Of 20 or so significant companies that looked at us there were significant principals at ten of them. So in the instance of George Soros, it is George Soros' money I believe. So, you know, at Blackstone it is a publically held company. It is a broadly held company. So that never came up -- I believe I read in the affidavit before the MOD analysis was fraudulent. Cibolski testified that it was fraudulent.

Q. That is your opinion, but that is to be disputed.

A. No, that is his opinion. Not mine.

Q. That is to be disputed and resolved at trial, correct, but Blackstone you just said is broadly held, right, and doesn't have ownership in one person?

FEINSOD

A. No, I said it may. I am not familiar with Blackstone publically held. I didn't say that.

Q. I thought you said it was publically held?

A. I did not.

Q. You said ten of the investors had -- where it was one -- ten of the significant investors came to add one person as a common owner. Do you know if the other ten did not?

A. That is not accurate. I don't believe I said that.

Q. Okay. What did you say?

A. I don't know. I think I said it was five.

Q. Okay.

A. And I give you the example of George Soros, and Arlon Capital is owned by Paul Freiberg. It's a large company

Q. Of the others that are not owned by one person, who were the other potential investors that were not owned by one person?

FEINSOD

A. I don't have the list in front of me, and your question is meant to be confusing I think so --

Q. I am not trying to confuse you. I guess let's look at your exhibit that you list A through O. I believe it is Exhibit GG, which is number 37. Do you have that open?

A. I do.

Q. Okay. Of the potential investors that are listed as A through O on Exhibit 37, which are the potential investors that were not owned by a single individual?

A. None of them are owned by a single individual. I am going to -- looking at the list now, some have significant -- some have significant investment -- have more single significant investors than others.

Q. Which are the ones that you know of have more single significant investors?

A. Soros, Arlon, CRP, Convest, Union Capital, Matlin Patterson certainly

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does. Saratoga certainly does. They all have significant principals.

Q. Which -- which has ownership that is broader than a single person?

MR. HASHEM: Objection.

A. That is a meaningless -- that doesn't mean anything to me. I apologize.

Q. Is there a potential investor here that is -- that is publically traded that is owned by more than one person?

A. There is nobody there that is publically traded. I am going to clarify what I said now looking at the list other than Lattenberg Thalman and now Moelis have become publically traded in the ten years since this started.

Q. So Lattenberg was publically traded; is that right?

A. I believe it was on the New York Stock Exchange. Yes.

Q. And just do clarify, Blackstone was not publically traded?

A. I don't believe it is. It is still not.

FEINSOD

MR. WEINBERG: Thank you. I think we are done.

MR. HASHEM: All right.

THE VIDEOGRAPHER: We are off the record at 3:20 p.m., and this concludes today's testimony given by Michael Feinsod. The total number of media units used was four and will be retained by Veritext New York.

(Time noted: 3:20 p.m.)

MICHAEL FEINSOD

Subscribed and sworn to before me this day of , 2021

FEINSOD

C E R T I F I C A T I O N

I, DEBBIE ZAROMATIDIS, a Shorthand Reporter and a Notary Public, do hereby certify that the foregoing witness, MICHAEL FEINSOD, was duly sworn on the date indicated, and that the foregoing is a true and accurate transcription of my stenographic notes.

I further certify that I am not employed by nor related to any party to this action.



DEBBIE ZAROMATIDIS

FEINSOD
E X H I B I T S

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FEINSOD
ERRATA SHEET
VERITEXT/NEW YORK REPORTING, LLC
CASE NAME: SBA V. FEINSOD
DATE OF DEPOSITION: NOVEMBER 16, 2021
WITNESSES' NAME: MICHAEL FEINSOD
PAGE LINE CHANGE REASON

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MICHAEL FEINSOD
SUBSCRIBED AND SWORN TO BEFORE ME
THIS ____ DAY OF _____, 20__.
(NOTARY PUBLIC)
MY COMMISSION EXPIRES:

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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